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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 206.

WILLIAM P. LITTLE, ASSIGNEE OF JOHN R. ALEXANDER, A BANKRUPT, APPELLANT,

vs.

T. L. ALEXANDER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

FILED OCTOBER 2, 1873.

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1 UNITED STATES OF AMERICA,
District of North Carolina:

Circuit court, fourth circuit.

Be it remembered that on the sixteenth day of January, A. D. 1872, William P. Little, assignee of John R. Alexander, by his solicitors, H. C. Jones and R. D. Johnston, filed his bill in the office of our court of equity in the circuit court of the United States for the district of North Carolina, against T. L. Alexander, which said bill of complaint and the exhibits appended there to are in the words and figures following, to wit:

2 *Bill.*

Circuit court in equity, spring term, 1872.

UNITED STATES OF AMERICA,
District of North Carolina:

WILLIAM P. LITTLE, ASSIGNEE OF JOHN R. Alexander, bankrupt,
against
T. L. ALEXANDER.

To the honorable the judges of said court:

Humbly complaining showeth unto your honor, your orator, that on the 16th day of March, A. D. 1869, the defendant, T. L. Alexander, commenced an action in the superior court of Mecklenburg County, N. C., against his father, one John R. Alexander, for the recovery of the sum of two thousand nine hundred and sixteen dollars, alleged in the complaint filed therein to be due by promissory note; that the summons in said action was made returnable before the clerk of said court in twenty days from the service thereof; that at the next term of said court, to wit, at spring term, 1869, the plaintiff in said action obtained a judg-
3 ment against the said John R. Alexander for the sum of two thousand nine hundred and ninety-seven and $\frac{85}{100}$ dollars, for his principal, interest, and costs; that no answer was filed in said case, but that the above-mentioned judgment was obtained upon motion of counsel for want of an answer and was docketed in the office of the clerk of the superior court of Mecklenburg County, in which said county the lands hereinafter mentioned and described are situate, on the 19th day of May 1869; that within four months after the rendition of said judgment, to wit, on the 1st day of September, 1869, a petition in bankruptcy was filed by on' Joseph H. Wilson and one Robert D. Whitley, creditors of the said John R. Alexander in the district court of the United States for the Cape Fear district of North Carolina, praying that the said John R. Alexander might be declared a bankrupt, upon the ground that he had suffered his property to be taken upon final process in favor of T. L. Alexander, and to defeat and delay the operation of the act of Congress in relation to bankruptcy, approved March 2, 1867; that
4 upon this petition the said John R. Alexander was accordingly adjudged and decreed a bankrupt by the said district court, and your orator, William P. Little, has been chosen assignee of the estates and effects of the said John R. Alexander; that an assignment of the estates and effects of the said John R. Alexander has been duly exe-

cuted to your orator by Robert Broadfield, one of the registers in bankruptcy for the district of North Carolina.

Your orator would further show unto your honor that the estate of the said bankrupt consisted of a large real and personal property, which said property your orator, in compliance with the requirements of the act of Congress, exposed for sale at public outcry, on premises of said bankrupt, in said county; that having reason to believe that the defendant was contriving to purchase the property at a price much below its actual value, your orator, upon the advice, and with the assent of the majority in interest of creditors of said estate, employed certain parties to bid at the said sale for the said property a fair and reasonable sum, for the benefit of the creditors of said estate; that
5 all of said property brought a fair and reasonable price with the exception of the four tracts described in the exhibits marked respectively A, B, C, & D, hereto appended, and which your orator prays may be taken as a part of this bill, which said tracts of land were bid off by one Robert D. Whitley, by agreement with your orator for the benefit of the creditors, said tracts not having brought, in the opinion of your orator, a fair price.

Your orator would further show unto your honor that, subsequent to spring term 1869, to wit, on the 17 day of June, A. D. 1869, an execution issued from the office of the clerk of the superior court of Mecklenburg County, upon the above mentioned judgment to the sheriff of said county, who levied the same upon all the real estate of the said John R. Alexander, including the three tracts described in the exhibits, A, B, and C, & D, on the 14 day of August, 1869; that the said John R. Alexander was, on or prior to said 14 day of August, 1869, insolvent, and that the defendant had at that time reasonable cause to believe that
6 the said John R. Alexander was insolvent, and that the said levy was intended tos ecure a preference in fraud of the act of Congress relating to bankrupts.

Your orator would further show unto your honor that the said defendant has, since that time, been constantly threatening and still threatens to have the lands so levied on, and particularly the lands described in the exhibits, A, B, C, & D, sold under the said execution by reason of his said judgment and execution, by reason of which claim and threatening of the defendant the market value of the land has been so greatly depreciated that your orator has been unable to obtain therefor a fair price.

Your orator expressly charges that, at the time of the rendition of the said judgment in the superior court of Mecklenburg County, and at the time of levying the said execution, as well as at the time of the issuing the summons in said cause, the said John R. Alexander was insolvent, and that he, the said John R. Alexander, procured his property, to wit, all his real property, including that described in the exhibits marked A, B. C & D, to be seized upon the said execution with the intent
7 to give a preference to the defendant T. L. Alexander, plaintiff in that action; that the same was done in fraud of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," ratified March 2, 1867.

And your orator further charges that at the time of the issuance of said summons, and at the time of the rendition of said judgment, and the seizure of said property under the execution issued upon said judgment, the said T. L. Alexander had reasonable cause to believe that the said John R. Alexander was insolvent, and that the said seizure upon execution was procured by the said John R. Alexander in fraud of the

provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," ratified March 2, 1867.

And your orator further charges that the said seizure upon execution of the property of the said John R. Alexander, including that described in the exhibits marked A, B, C, & D, was procured and made within four months next before the filing of the said petition in bank-
8 ruptcy against the said John R. Alexander by the said Joseph H. Wilson and Robert D. Whitley.

And your orator further charges that, the said John R. Alexander did, within four months before the filing of the said petition in bankruptcy against him, to wit, on the 14th day of August, 1869, suffer his property, to wit, the said tracts of lands described in the exhibits marked A, B, C, & D, to be seized upon execution in favor of T. L. Alexander, the defendant in this cause, issuing from the superior court of Mecklenburg County, as above set out, with intent to give a preference to the said T. L. Alexander, one of his creditors; that the said John R. Alexander, at the time of his so suffering his property to be taken upon execution was insolvent, and that the said T. L. Alexander had reasonable cause to believe that the said John R. Alexander was insolvent, and that said levying or seizure was in fraud of the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, by which means
9 your orator charges that said John R. Alexander did, within four months before the filing of the said petition in bankruptcy, transfer the said three tracts of land to the said T. L. Alexander in fraud of the provisions of the above-mentioned act of Congress, which transfer your orator is advised is made void as against his claim by the thirty-fifth section of said act.

And your orator further charges that the said John R. Alexander did, within six months before the filing of the said petition in bankruptcy against him, suffer the said four tracts of land described in the exhibits marked A, B, C, & D, to be seized upon the above-mentioned execution in favor of the defendant T. L. Alexander, one of his creditors, with intent to give a preference to him the said T. L. Alexander, and that the said defendant had reasonable cause to believe that the said John R. Alexander was insolvent, and that the said levy on or seizure of said land under the said execution was suffered in fraud of the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2,
10 1867, which said seizure your orator is advised is rendered void by the thirty-ninth section of said act.

All of which actings and doings are contrary to equity and good conscience, and tend to the manifest injury of your orator and the creditors of the said John R. Alexander. In consideration whereof and for the reason that your orator is remediless save in this honorable court:

To the end, therefore, that the said T. L. Alexander may, upon his oath, according to the best of his knowledge, information, and belief, full, true, and perfect answers make to all and every the matters aforesaid, and that as fully as if the same were here repeated and he particularly interrogated thereto, and that the levy by the sheriff of Mecklenburg County upon the above-described land under the execution issuing from the superior court of said county may be declared by a decree of this honorable court to be void and of no effect, and that the said T. L. Alexander may be restrained by a writ of injunction from this honorable court from proceeding to sell said land under the said execu-

11 tion, or from interfering with the same in any wise, and for such other and further relief as your orator's case may require and to your honor may seem meet:

May it please your honor to grant unto your orator a writ of injunction, to be directed to the said T. L. Alexander, restraining him from proceeding to sell the said land under the said execution, or from interfering with the same in any wise; and may it please your honor to grant unto your orator your writ of subpœna, commanding him to appear before your honor at the next term of this court, to be held at Raleigh, on the 1st Monday of June, 1872, then and there full, true, and perfect answers to make to all and singular the premises; and further to stand to, perform, and abide by, such further order and decree as to your honor shall seem meet.

And your orator as in duty bound, &c.

JONES & JOHNSTON,
Sol's for Plff.

UNITED STATES OF AMERICA,
District of North Carolina:

12 Personally appeared before me, F. W. Ahrens, one of the commissioners of the United States in and for said State, William P. Little, plaintiff above named, who, being duly sworn, says that the matters and things in the above petition stated as of his own knowledge are true, and those otherwise stated he believes to be true.

WM. P. LITTLE,
Assignee.

Sworn & subscribed to before me, this 13th day of Dec'b'r A. D. 1871.

F. W. AHRENS,
U. S. Commissioner.

Exhibit A, referred to in bill.

The following are the boundaries of a tract of land of the estate of John R. Alexander, bankrupt, surveyed for W. P. Little, assignee:

The said land is situated in the county of Mecklenburg, State of North Carolina, beginning at a post-oak stump near a road, and runs S. 17¼ E. 20 chains and 35 links to a small post-oak by the side of the
13 road near a pond—Henderson Quenj's corner; thence with four of said Quenj's lines: (1st.) S. 20¼ W., 10 ch'ns & 75 links to a small hickory by a road; thence (2nd) S. 57½ E., 7 ch'ns & 25 lin. to a stone, formerly a black-oak by a dog-wood; thence (3d) S. 11½ W., 12 ch'ns to a stone, formerly a crooked hickory; thence (4th) S. 43¾ E., 6 ch'ns & 10 lin. to a large black-oak stump; thence N. 33¼ E., 53 ch'n & 80 lin. to a hickory (gone) in a field by the edge of a meadow; thence S. 20 E., 7 ch'n & 28 lin. to a black-oak by the fence; thence N. 76¾ E., 10 ch'ns to a white-oak by a dry hollow; thence, with (2) of Mary Page's lines, No. 27 W., 11 ch'ns to a white-oak (gone) at a branch by a cedar; thence N. 55 W., 14 ch'ns to a pile of stones in the lane at the old gin-house by a black-oak; thence, with four of the division lines, S. 37½ W., 10 ch'ns and 5 lin. to a stone in the old lane; N. 51 W., 8 ch'ns & 75 lin. to a stake by old hedge-row; S. 63 W., 19 ch'ns to a post-oak by a fence; N. 68 W., 8 ch'ns & 55 lin. to the beginning; containing 125 acres.

Surveyed March, 1871, by

J. E. MOORE,
County Surveyor.

14 *Exhibit B, referred to in bill.*

The following are the boundaries of a tract of land of the estate of John R. Alexander, bankrupt, surveyed for W. P. Little, assignee, situate in Mecklenburg County, and State of North Carolina: Beginning at a stake on the east side of the Statesville road at the corner of a fence, and runs S. 89 E., 31 ch'ns & 35 lin' to a Spanish-oak in a field; thence N. 7 W., 6 ch'ns & 50 lin' to a pine at the fence; thence N. 88 W., 32 ch'ns & 15 lin' to a black-jack stump on west side of Statesville road; thence S. 4 E., 8 chains & 85 lin' to the beginning corner, containing twenty-seven and three-quarters acres.

Feb'y, 1871. Surveyed by—

J. E. MOORE, *C. S.*

Exhibit C, referred to in bill.

The following are the boundaries of a tract of land of the estate of Jno. R. Alexander, bankrupt, surveyed for W. P. Little, as-
15 signee, situate in Mecklenburg County, State of North Carolina: Beginning at a stone on the north side of the Atlantic, Tennessee, & Ohio Railroad, and runs S. 86 E., 20 ch'ns & 75 lin' to a stone in a field near the barn; thence S. 51 E., 12 ch'ns & 75 lin' to a stone in the old Statesville road; thence No. 60 E., 14 ch's to a stone in the old Tuckaseegee road; thence N. 7½ E., 9 ch's & 30 lin' to a stone & post-oak at the corner of a fence; thence S. 43½ E., 7 ch'ns & 50 lin' to a gum stump in a flat; thence S. 63 W., 27 ch'ns & 50 lin', crossing the railroad, to a post-oak by a b. gum; thence N. 61¼ W., 36 ch'ns & 10 lin' to the beginning.

Feb'y, 1871. Surveyed by—

J. E. MOORE, *C. S.*

Exhibit D, referred to in bill.

The following is a description of a tract of land belonging to the estate of John R. Alexander, situate in Mecklenburg County:
16 The said land is located about four miles from the city of Charlotte in said county, lying on the Atlantic, Tennessee, and Ohio Railroad, adjoining the lands of Joe. Cameron, (lately purchased by B. J. Shannonhouse for said Cameron,) on the east; the lands of Robinson and others containing about ten acres.

17 On which bill and exhibits the following proceedings were had in said circuit court on the fifteenth day of January, A. D. 1872.

Order of the judge.

UNITED STATES OF AMERICA,
District of North Carolina:

WILLIAM P. LITTLE, ASSIGNEE OF JOHN R. Alexander, bankrupt,
against
T. L. ALEXANDER.
} Circuit court.

Upon consideration of the bill and affidavits in the above-entitled cause, it is ordered that a copy of this bill with subpœnas issue to T.

L. Alexander, the defendant in this suit, that he may be and appear before one of the judges of this court at Elizabeth City, N. C., on the 15th of February, A. D. 1872, then and there to answer, demur, or otherwise show cause why the complainant may not have decree for an injunction as prayed for in his bill, and in the meantime it is ordered that the said T. L. Alexander, and all persons acting for him and in his interest, be restrained and prohibited from any further action upon the judgment and execution mentioned in plaintiff's bill.

(Signed) G. W. BROOKS, *Dist. Judge.*

18 And thereupon, at the request and by the direction of the said complainant, by his solicitors aforesaid, a writ of subpœna was issued in pursuance of the prayer of the said bill of complaint against the said defendant, returnable on the first Monday in February, 1872; which subpœna is in words and figures following, to wit:

UNITED STATES OF AMERICA,
District of North Carolina ss:

The United States of America to T. L. Alexander:

We command you that you appear before the judges of our circuit court of the United States of America, for the district of North Carolina, at the office of the clerk of the said court, in the city of Raleigh, in said district, on the first Monday in the month of February next, to answer the bill of complaint of William P. Little, assignee of John R. Alexander, bankrupt, filed in the clerk's office of said court, in said city of Raleigh, then and there to receive*d* and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of North Carolina to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Su-
19 preme Court of the United States, at Raleigh, in said district, the last Monday in November, 1871, and in the ninety-sixth year of the Independence of the United States.

Issued 16th January, 1872.

[L. S.] N. J. RIDDICK, *Clerk.*

MEMORANDUM.—The within-named defendant is notified that, unless he enter his appearance in the clerk's office of said circuit court, at Raleigh aforesaid, on or before the day to which the within writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

N. J. RIDDICK, *Clerk.*

On which subpœna the marshal of the United States for said district made the following return:

Executed by delivering a true copy of the within subpœna and a copy of the original bill to the defendant, T. L. Alexander, January the twenty-third, 1872.

S. T. CARROW,
Per J. T. CUTHERELL, *D. M.*

20 And afterwards, and previous to the hearing, an agreement in writing of the counsel of the respective parties is filed, in the words and figures following, to wit:

Motion for preliminary injunction to be heard on the 13th of Feb'ry, at Eliz. City.

In the circuit court of the United States for the district of North Carolina, sitting in equity.

WILLIAM P. LITTLE, ASSIGNEE OF J. R. ALEXander,
v.
T. L. ALEXANDER AN—

In the case above stated, the parties and their counsel finding it highly inconvenient to attend at Elizabeth City, on the 13th of February, 1872, to argue the motion for an injunction in said case, by reason of the special term of the superior court appointed to be held for Mecklenburg County, on the 29th inst, we do severally agree that said motion for injunction may be adjourned over to the 16th of March, and that the stay of proceedings may be likewise extended to that time, his hon. the judge assenting thereto.

And it is further agreed and understood that answers to the
21 bill will not be insisted on before the first Monday in March, process having been served only on the 24th inst.

H. W. GUION,
Sol. for T. L. Alexander.
VANCE & DOWD,
Att'ys for T. L. & H. J. Alexander.
JONES & JOHNSTON,
Att'ys for W'm P. Little, Assignee.

And afterwards, to wit, on the fourth day of March, 1872, following further proceedings were had in said circuit court in said cause: This day comes said defendant by his solicitors, Messrs. Vance and Daub, and H. W. Guion, and files his plea & his answer to the said bill of complainant, and the said plea filed, on said last-mentioned day is in words and figures following, to wit:

In the circuit court of the United States for the district of North Carolina.

WILLIAM P. LITTLE, ASSIGNEE OF JOHN R. Alexander, bankrupt,
vs.
T. L. ALEXANDER.

22 The plea of T. L. Alexander to the bill of complaint of William P. Little, assignee of John R. Alexander, bankrupt, complainant.

This defendant by protestation, not confessing or acknowledging all or any of the matters & things in the said bill of complaint to be true in such manner & form as the same are therein and thereby set forth & alleged, for plea thereunto saith: That heretofore and before the said complainant exhibited his present bill in this honorable court, on the 15th day of January, in the year of our Lord 1872, upon the filing of a petition in bankruptcy against the said John R. Alexander in the district court of the United States for the Cape Fear district of North Carolina, two of the petitioning creditors, viz, Joseph H. Wilson & R. D. Whitley, now represented in this suit by the complainant William P. Little, assignee of said John R. Alexander, in behalf of themselves & the other creditors of the said John R. Alexander, did sue out from

the court aforesaid writs of injunction against this defendant, & also against Hattie J. Alexander & R. M. White, sheriff of Mecklenburg County, for the same matters & to the same effect, for the same
23 parties in interest & for the like relief & purpose as against this defendant, as the now complainant doth, by his present bill set forth; which said injunction this defendant did move the court should be dissolved, & the said motion was heard, argued & determined at a district court of the United States, held at Wilmington on the first Monday after the fourth Monday in October, 1871, by & before the honorable George W. Brooks, judge of said court then and there presiding, & by whom the said injunction was then & there dissolved & the petition therefor dismissed & determined.

And therefore this defendant doth plead the said former petition, motion, & proceedings in bar to the said now complainants said present bill, & humbly prays the judgment of this hon. court whether he shall be compelled to make any further or other answer to the said bill, & he prays hence to be dismissed with his reasonable costs in this behalf sustained.

VANCE & DOWD,
H. W. GUION,
Sol's pro Def't.

24 We certify that, in our opinion, the foregoing plea of T. L. Alexander to the bill of complaint of W. P. Little, assignee of John R. Alexander, bankrupt, is well founded in law & proper to be filed in the above case.

Feb'y 27th, 1872.

VANCE & DOWD,
H. W. GUION.

UNITED STATES OF AMERICA,
District of North Carolina, ss:

T. L. Alexander being duly sworn does depose & say that he has read the foregoing plea to the bill of complaint in this suit & that the same is not interposed for the purpose of delaying said suit, & that it is true in point of fact to the best of his knowledge, information, & belief.

T. L. ALEXANDER.

Sworn to & subscribed before me this 29th day of , A. D. 1872.

F. W. AHRENS,
U. S. Commissioner.

25 And the said answer, filed on said last mentioned day, is in the words and figures following, to wit:

Answer.

In the circuit court of the United States for the district of North Carolina.

WILLIAM P. LITTLE, ASSIGNEE OF JOHN R. Alexander, bankrupt, *vs.* T. L. ALEXANDER.	In equity. Answer of defendant.

The answer of T. L. Alexander, defendant to the bill of complaint of William P. Little, assignee of John R. Alexander, bankrupt, complainant.

This defendant, now & at all times hereafter, saving & reserving unto himself all benefit & advantage of exception which can or may be had

or taken to the many errors, uncertainties, & other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith:

That it is true that defendant, on or about the 16th of March,
26 1869, did institute a suit in Mecklenburg superior court against John R. Alexander upon a promissory note for the sum of two thousand nine hundred and sixteen dollars, and at spring term, 1869, of said court, did recover a judgment thereon for the sum of two thousand nine hundred and ninety-seven $\frac{85}{100}$ dollars as principal, interest, & costs, and that said judgment was rendered according to the course and practice of said court for want of the answer of the defendant.

That it is also true that proceedings in bankruptcy were instituted against said John R. Alexander as set forth in complainant's bill; that said John R. Alexander was adjudicated a bankrupt, and that said William P. Little was appointed the assignee, & is entitled to all rights and claims pertaining in law or equity to such appointment.

That it is also true that the estate of said John R. Alexander consisted of a large real & personal property, which the said William P. Little offered at public sale, but whether regularly or in pursuance of the provisions of the bankrupt act this defendant does not know &
27 has no information in regard thereto; but he denies that he had any good & sufficient reason to believe that this defendant was contriving to buy said property at a price much below its value, or that he had any such intent; that at the time of the sale, one of the counsel of this defendant gave public notice that defendant then had a judgment docketted in the superior court of Mekleuburg County against said John R. Alexander, then enjoined from sale by the district court for Cape Fear district, but that purchasers at the assignee's sale would take title subject to the lien of said docketted judgment; that thereupon plaintiff's counsel made a full explanation to the bystanders of the liens & claims of the respective parties, and in positive terms assured them that the judgment of this defendant was utterly void & of no effect and purchasers would take titles from the assignee, good and and free from all liens, beyond all question; that the sale proceeded and, as defendant has been informed & believes, all the tracts sold, including those described in complainant's bill as A, B, C, & D, brought their
28 fair market value, and defendant denies that the tracts A, B, C, & D, were any more depreciated in value by the existence of defendant's judgment than the other tracts sold at the same time and under the same circumstances. Defendant was not personally cognizant of any agreement between the assignee & the creditors of said John R. Alexander, by which they employed by-bidders at said sale, especially to run up said property against this defendant, and was not aware of the same until he received a copy of complainant's bill of complaint. And this defendant submits whether plaintiff & the alleged bidders can be relieved in this honorable court from the consequences resulting from the illegal employment of puffers, at a sale made by virtue of orders of the district court of the United States in bankruptcy.

But this defendant, from what he has learned recently, denies that all the creditors joined in the said employment of puffers, or that all agreed that the property should be bid in for the assignee.

That on the other hand, said property was bid in for only a
29 few of them, and that they being unwilling to pay for the property at the bids made by them, subject to the lien of defendant's

judgment, now seek to be relieved therefrom, and to protect themselves, by obtaining a perpetual injunction against this defendant from enforcing the execution upon his said judgment.

This defendant, therefore, submits to this honorable court, whether said alleged bidders at the assignee's sale, will be allowed to claim the jurisdiction of this honorable court to obtain a writ of injunction to restrain the execution of final process issued from the superior court of Mecklenburg County to one of its own officers, at the instance and under the name of the plaintiff as an assignee in bankrupcy.

This defendant avers that he had no connection with the sale of said land, viz, tracts A, B, C, & D, save as to the notice given as to his judgment aforesaid, and that he has no interest in the question between said assignee and the bidders at said sale, and that he is indifferent as to whether said sale be set aside or not; and defend-
30 ant believes that matter was introduced into plaintiff's bill of complaint with the view of securing the jurisdiction of the court, only to obtain the writ of injunction against defendant's proceeding on his judgment at law.

Further answering, defendant says that the judgment obtained by him at the spring term, 1869, was duly and fairly rendered, according to the course & practice of the court, without collusion with said John R. Alexander, and said judgment was regularly docketted at that term and by law effected a lien on all the real estate of said John R. Alexander in the said county of Mecklenburg from the date of docketting the same; that he did sue out a fieri-facias & caused the same to be levied on the realty of said John R. Alexander, as stated in plaintiff's bill of complaint; that no sale has ever been made under said levies or final process, owing to writs of injunction sued out of the district court of the United States for the Cape Fear district of North Carolina, by the plaintiff or the creditors represented by him; and that no prop-
31 erty or effects of said John R. Alexander have ever come to defendant's hands under or by virtue of said judgment or execution. And he expressly denies that said John R. Alexander either procured or suffered any of his property to be taken or levied upon under said judgment or execution with intent to give a preference to his defendant or with any intent to hinder, delay, or defraud his creditors, or with any intent to defeat or delay the operation of the bankrupt act.

Further answering, this defendant avers that his said judgment was obtained without any concert, collusion, or agreement. And the facts in relation to the same are substantially as follows:

This defendant, at different times in the years 1860 and 1861, had loaned to the defendant John R. Alexander, his father, divers sums of money & taken his notes for the same, at the dates of said loans. That after the war he needed his money due from his father & other parties, & if he could not get the money he desired to have his notes renewed. Wishing to avoid any unpleasant altercations with his father
32 which he feared might occur, he placed his several notes in the hands of Samuel P. Alexander, esq., a gentleman residing in Charlotte, & who generally attends to the business of others entrusted to his care, with the request that he would endeavor to have them paid or renewed; that said S. P. Alexander, as he has since informed this defendant, & he believes said information to be true, called upon said John R. Alexander & requested him either to pay said notes, or renew them by putting them all into one. That said John R. Alexander hesitated for some time, averring that if permitted to pay all or some of

his debts (mentioned at the time) in bank notes, he had property enough to pay off the whole of his indebtedness; that after some further intercession, the said John R. Alexander consented to renew said notes, & after the calculations of interest were made, executed the note, upon which suit was brought. That said renewal was made on the first day of January, 1869. Defendant took said note & held it until, finding the other creditors of said John R. Alexander suing on their claims,
33 & believing that his father's estate would prove inadequate to the payment of all his debts, & urged by friends, he reluctantly placed said note, on or about the 16th day of March in the hands of a law-firm for collection. That, as informed by his counsel, a summons was issued, under the new code of civil procedure, returnable before the clerk, requiring said John R. Alexander to appear & answer the same twenty days after the service thereof; that before the return day arrived, the code was suspended by an act of the general assembly, and all writs were made returnable to the stated terms of the courts. The proceedings then begun and pending before the clerk were transferred to the ensuing term of the court, which was held in May, 1869; that defendant's attorneys filed a complaint, & the same was verified as true according to said code, & the necessity of making defence upon oath was thereby imposed upon the said John R. Alexander, & for want of an answer, at said spring term, on the 17th of May, 1869, defend-
34 ant's attorneys took judgment, according to the provisions of the code & according to the course & practice of the said court.

This defendant has also learned and believes that many other suits were brought to said term against said John R. Alexander, and he, for the purpose of delay, paid fees to several counsel to enter the usual dilatory pleas according to the old system; that he retained one especially as defendant has been informed & believes, to represent him in the suit brought against him by this defendant; that at the spring term aforesaid the said John R. Alexander was too sick to attend court, and having no real defense to this defendant's suit, none could be put in for him, as the same had to be verified before it could be received; that said judgment was taken by his attorney, and there was no previous arrangement, agreement, or collusion between this defendant and his father for that purpose.

Further answering, defendant says that he reluctantly sued his father on the said note, but was forced to consent to do so from the con-
35 sideration that the very creditors who are now most actively seeking to avoid his said judgment had already brought suits for their respective claims against said John R. Alexander, in the same court, and were desirous of each gaining a priority of judgment; that their suits being brought upon old notes they were delayed by the pleadings & practice of the court in relation such debts; and the defendant only obtained that priority which the other creditors were anxious to secure for themselves. And this defendant having fairly obtained a prior lien by final process upon the property of the said John R. Alexander, without fraud, collusion, or any intent on the part of said John R. Alexander, may rightfully claim the benefit of the same in this honorable court; the same not being contrary to equity or good conscience.

And this defendant denies all & all manner of unlawful combination & confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said com-
36 plainant's said bill of complaint contained, material or necessary for this defendant to make answer unto & not herein & hereby

well & sufficiently answered, confessed, traversed, & avoided or denied, is not true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, & prove as this honorable court shall direct, & humbly prays to be hence dismissed, with his reasonable costs & charges in this behalf most wrongfully sustained.

VANCE & DOWD,
H. W. GUION,
A. BURWELL,
Sols. for Def't.

UNITED STATES OF AMERICA,
District of North Carolina, ss:

T. L. Alexander makes oath that the several matters of fact set forth in the foregoing answer as of his own knowledge are true, and those as not of his own knowledge he believes to be true.

T. L. ALEXANDER,

Sworn to & subscribed before me this 29th day of February, A. D. 1872.

F. W. AHRENS,
U. S. Commissioner.

37 And afterwards, to wit, on the 6th day of May, 1872, an agreement in writing of the counsel of the respective parties is filed, in words and figures following, to wit:

Circuit court of the United States, district of North Carolina.

WILLIAM P. LITTLE, ASSIGNEE OF JNO. R. Alexander
v.
T. L. ALEXANDER.
} In equity.

It is agreed between Messrs. C. Dowd & H. W. Guion, attorneys for defendant in above entitled case now pending in U. S. cir. c't of the one part, and Mess. Jones & Johnston, att'ys for pl'ff of second part, that the testimony heretofore taken before Jno. E. Brown, esq., special comm'r. in a cause then pending in the U. S. dist. court for Cape Fear district, wherein T. L. Alexander was plaintiff, and W. P. Little, assignee of Jno. R. Alexander, defendant, shall be received and heard as testimony in the above entitled case.

JONES & JOHNSTON,
Sols. for Plff.
H. W. GUION &
C. DOWD,
, Sols. for Def't.

And the said cause is set for hearing at the next term.

38 And on the day last aforesaid the parties in said cause, by their said solicitors aforesaid, filed as evidence, admitted to be read in said cause, the depositions taken under a commission by John E. Brown, a special commissioner, of the following parties, viz: Dr. Isaac Wilson, S. P. Alexander, Thomas H. Brem, J. D. Kerrans, and R. L. DeArmand, who were called as witnesses for the complainant, and W. A. Williams, John R. Alexander, and T. L. Alexander, who were called as witnesses for the defendant; also the following transcripts of judgments, suits, and proceedings in the superior court of Mecklenburg County, in the following cases, to wit:

T. L. Alexander *vs.* J. R. Alexander, Hattie J. Alexander *vs.* John R. Alexander, J. McHenderson *vs.* John R. Alexander, R. D. Whitley, executor, *vs.* John R. Alexander, T. H. Brem, s. p., *vs.* John R. Alexander, Alice Alexander *vs.* John R. Alexander, J. Striewall, guardian, *vs.* John R. Alexander, Barry & Harry, adm's, *vs.* J. R. Alexander, Joseph H. Wilson *vs.* John R. Alexander; also a list of creditors of the estate of John R. Alexander, bankrupt, who have proved their debts, as certified to by R. H. Broadfield, register in bankruptcy, which said commission, depositions, transcripts, and list are in words and figures as follows, viz:

39 *Commission.*

UNITED STATES OF AMERICA:
District of North Carolina:

District court of the United States, Cape Fear district of North Carolina.

The President of the United States of America to John E. Brown, esquire, of the city of Charlotte, in the district aforesaid, greeting:

We, reposing special trust & confidence in your integrity, do authorize and empower you to cause witnesses to appear before you at such time & place as you may appoint, & them on oath examine, pursuant to 67 order of December term, 1861, of the rules of equity prescribed by the Supreme Court of the United States for the circuit courts of the States, touching all such matters & things as they shall know of & concerning a certain matter of controversy pending in our district court of the United States for the Cape Fear district of North Carolina, wherein T. L. Alexander is plaintiff, and W'm P. Little, assignee of John R. Alexander, bankrupt, is defendant.

40 And the depositions in writing by you so taken, the same to transmit, sealed with your seal, to the judge of our said district court of the United States for the Cape Fear district of North Carolina, at , on the day of next, to be read in evidence in behalf of the plaintiff & defendant in said controversy.

Witness the Hon. George W. Brooks, judge of the said court, & seal thereof, at Wilmington, in said district, this 25th day of May, A. D. 1871.

W'M LARKINS, *Clerk.*

UNITED STATES OF AMERICA,
District of North Carolina:

T. L. ALEXANDER, PLAINTIFF,
against
W. P. LITTLE, ASSIGNEE IN BANK. OF J. R. Alexander.

Pursuant to annexed commission, to me directed, I, John E. Brown, of the city of Charlotte & district aforesaid, at my office in the said city, on the 15th June, 1871, & on other days, as set forth in the

41 depositions, both parties, by their attorneys, being present, I proceeded to take the depositions of the following persons, to wit, Dr. Isaac Wilson, S. P. Alexander, Tho's H. Brem, J. D. Kerns, R. L. D. Armand, called for defendant, & W. A. Williams, John R. Alexander, & T. L. Alexander, called for plaintiff, who, having been duly sworn upon the Holy Evangelists of Almighty God to depose the truth, the

whole truth, and nothing but the truth between the parties named in said commission, deposeth and saith as follows:

Deposition of Dr. Isaac Wilson.

Dr. ISAAC WILSON, called for defendant, being duly sworn, deposes & says as follows:

I had a conversation with T. L. Alexander, the plaintiff in this suit, at his store in the city of Charlotte, on my return from an excursion to Morehead City, shortly after the court at which T. L. Alexander obtained judgments against John R. Alexander—can't recollect the date—in which he told me that he had obtained judgment for himself
42 & Hattie Alexander against John R. Alexander. The am't of his judgment was $2,900 or $3,000—can't say exactly which—and that he did not think that Hattie Alexander ought to lose her money, & that he had taken hers in ; that he had been at his father for some time to sell off his property & pay his debts; but his father said that he had plenty to pay his debts and have enough left to live on; said that he had got Mr. S. P. Alexander to talk to his father; and my understanding from T. L. Alexander was that S. P. Alexander had talked with his father, John R. Alexander, and that they had made an estimate and found that the estate would not pay out.

Quest. 2. Did not T. L. Alexander, in that same conversation, tell you that his judgment & Hattie's would consume all of his father's estate, & there would be nothing left for other creditors?

Ans. 2. He did not.

Quest. 3. State whether you had any conversation with T. L. Alexander after the war, & previous to the time above spoken of, in re-
43 gard to his own circumstances. If so, when, where, & what was it?

Ans. 3. I had a conversation with him after the war, but do not recollect when or where it was, in which we were talking of the general loss of property sustained by the people of the South, and that he then told me that he, T. L. Alexander, had lost everything. To which I replied, (this objected to by defendant's counsel,) we have all lost everything. I think the conversation occurred soon after the war.

Ques. 4. State the relationship which exists between T. L. Alexander, John R. Alexander & Hattie J. Alexander.

Ans. 4. T. L. Alexander is the son of John R. Alexander; and Hattie J. Alexander is the niece of John R. Alexander.

Quest. 5. State whether the relations between T. L. Alexander & his father have always been kindly & affectionate.

Ans. 5. I think they have been, and know nothing to the contrary.

Quest. 6. State the value of the property of J. R. Alexander at the time these judgments were obtained.

Ans. 6. I have no idea.

Cross-examined by plaintiff:

44 Quest. 1. Are you not mistaken in stating that T. L. Alexander stated that he had taken Hattie Alexander's judgments for her.

Ans. I think I am not.

Quest. 2. Did he not say that Samuel P. Alexander had taken a judgment for her & that she ought to be paid?

Ans. 2. He did not, to the best of my recollection.

ISAAC WILSON.

Sworn & subscribed before me this 15 June, 1871.

JOHN E. BROWN, *Com'r.*

Deposition of S. P. Alexander.

S. P. ALEXANDER, a witness for defendant, being duly sworn, says:

Quest. 1. State whether you know the parties to this suit, & all you know in reference to the judgments of T. L. Alexander & Hattie J. Alexander against John R. Alexander, & what has occurred between you and either of those parties in regard to this matter or the circumstances of J. R. Alexander.

Ans. 1. I know the parties above named, & have had frequent conversations with T. L. Alexander previous to the time that he took judgment against his father, in reference to the debt that he obtained
45 judgment for. He expressed a desire to have it secured, but said he could not get his father to do anything. He gave me the notes and asked me to talk to his father, which I did, and made a calculation of interest, put all in one note, & got J. R. Alexander to sign it. It amounted to about $2,900.00. When I first talked with J. R. Alexander about the debt he refused to renew the notes, stating that he thought he could pay his debts. I told him I thought not. I did not know much about his business, but this was a just debt, and that he ought to pay it. He finally consented to renew these notes. As soon as he renewed the note to T. L. Alexander, I told him that he was going to sue him, & I carried the note to T. L. Alexander, and at the same time gave him a memorandum of the calculation. These transactions occurred a month or two before the court at which the judgments were obtained. My recollection is, that I received the Hattie Alexander note from Mr. Keerns after this. Miss Hattie Alexander had talked with me
46 about her note, & T. L. Alexander had talked with me frequently about both her's & his, as we were intimate friends. Knowing that Hattie Alexander had this note, I sent to her for it, & Mr. Kerns brought it, to the best of my recollection. I had this note renewed & gave it to C. Dowd, esq., an attorney of this court, for suit.

Quest. 2. State, if you can, what was the purport & tenor of the frequent conversations between T. L. Alexander & yourself in regard to these debts—the purport.

(Objected to by plaintiff.)

Ans. 2. I cannot state the conversations as they occurred, but the purpose was, as I deduced from our conversations, to collect his money, as he wanted the use of it, and wanted to save his debt, & like every one else, he was afraid of losing his old debts.

Quest. 3. Did you ever have any conversation with T. L. Alexander in which the question of J. R. Alexander's solvency was mentioned; & if so, state it, and state the time as near as you can.

Ans. 3. Yes; we talked about his solvency before the taking of these judgments. T. L. Alexander said that he was afraid that his
47 father was insolvent, & would not be able to pay his debts.

Quest. 4. State what was the purpose of renewing the notes of T. L. Alexander and Hattie J. Alexander, and the reasons therefor.

Ans. 4. For the purpose of collecting. They were renewed to meet the difficulties of the stay-law then in force in this State.

Quest. 5. State why the debts due T. L. Alexander & Hattie J. Alexander could not be collected without renewal.

(This question objected to by plaintiff.)

Ans. 5. Because, as I understand, of the stay-law then in force.

Quest. 6. State if you know whether the judge of the superior court for this district would permit judgments to be entered upon actions in

old debts, & whether he did not enforce the stay-law in the courts at the time these judgments were taken.

Ans. 6. According to my recollection, the stay-law was enforced at that time, and no judgments were taken upon old debts, as far as I know.

Quest. 7. What was the property of John R. Alexander worth
48 about the time these judgments were taken, & for six months previous thereto?

Ans. 7. I do not know.

Quest. 8. State what was the business of T. L. Alexander, and what means he had accumulated; & what were his opportunities for making money previous to Jan'y 1st, 1861.

Ans. 8. T. L. Alexander was a merchant in co-partnership with Thos. H. Brem, and my impression is they were making money & doing well. I do not know what part of the profits he received, and do not know what amount he had accumulated.

Cross-examined by plaintiff:

Quest. 1. Do you know the general character of T. L. Alexander and J. R. Alexander.

Ans. 1. I think I do.

Quest. 2. What is their character?

Ans. 2. I think they are regarded as upright, correct, & honest men.

Quest. . Do you know, or can you set forth any other matter or thing which may, in anywise, benefit either of the parties to this suit; if so, state it as fully as if you were specially interrogated thereto?

49 Ans. Nothing else that I can recollect.

And further this deponent saith not.

S. P. ALEXANDER.

Sworn & subscribed before me this 16th day of June, 1871.

JOHN E. BROWN,
Commissioner.

Deposition of Thomas H. Brem.

THOMAS H. BREM, witness called on the part of defendant & sworn testifies as follows:

Quest. 1. Do you know the parties to this suit?

Ans. 1. I do.

Quest. 2. State how long you have known T. L. Alexander & J. R. Alexander; what has been their occupations & means; & state all you know in regard to the debts & judgments of T. L. Alexander & Hattie J. Alexander against John R. Alexander.

Ans. 2. I have known T. L. Alexander about twenty years, & J. R. Alexander longer. T. L. Alexander was until about 1858, when I took him in as a co-partner. He put no money in the business, & I gave him one-sixth of the profits. The profits of our business amounted to about
$12,000 or $15,000 per annum, his share of the profits about
50 $2,800, in that business. We were in business as co-partners about nineteen months. Some time in 1860, when we dissolved, he was worth about ($7,000) seven thousand dollars, consisting principally of money & a family of negroes, which negroes cost him ($10,000) ten thousand dollars, I think. My impression is that he was married in 1860, & his wife & himself boarded at his father's & his uncle's, B. W. Alexander. He joined the Army in 1861, & remained to the close of the war in service. John R. Alexander was a farmer, & after the war I

do not know that he had anything left except his land & his horses & cattle. After the war the firm of Brem, Brown & Co., which consisted of Thomas H. Brem, John L. Brown, the said T. L. Alexander, & W. E. Stitt, took a lien upon J. R. Alexander's crop, to secure us for advances of money & merchandize to support his family & make a crop. T. L. Alexander was not, so far as I know, the agent of J. R. Alexander for selling his cotton or other produce. I know nothing about the
51 debts & judgments of T. L. Alexander & Hattie J. Alexander vs. John R. Alexander, except what I heard from T. L. Alexander & S. P. Alexander. About the time of the renewal of the notes T. L. Alexander asked me to talk with his father & and get him to renew the notes; he had become uneasy about his debt; that Samuel P. Alexander had told him to get the notes renewed, & then he could sue & get a judgment which would secure his debt, and as he (the witness) & Sam'l Alexander had influence with his father, they might get him to renew the debt. But I did not talk with J. R. Alexander about this matter. In the conversations between T. L. Alexander, S. P. Alexander, & myself we all thought that he (J. R. Alexander) was insolvent. (I had a small note against J. R. Alexander, and, believing him to be insolvent, I gave it to an attorney to have it renewed, & instructed him not to let him know that I wanted him bring suit on it, which was done.) (This objected to by plaintiff.) From my conversations with J.
52 R. Alexander, I inferred he always thought himself solvent. He thought he could pay the debt due J. H. Wilson, esq., in bank-bills, & intended to do so.

Quest. 2 Did you have any conversation with T. L. Alexander or S. P. Alexander about the judgments after they were obtained, and what was it?

Ans. 2. I think I had a conversation with T. L. Alexander about it. He said he had the judgment, & it secured his debt, as he thought.

Cross-examined by plaintiff:

Quest. 1. Did you pay T. L. Alexander any money prior to March, 1862; & if so, how much, & in what sums?

Ans. Our books show that from the 3d of April, 1860, to 1st March, 1861, we paid him $4,044.58.

Quest. 2d. Do you know what he did with this money?

Ans. 2. I do not.

Quest. State, if you can, who his family consisted of, & what were his expenses, during the co-partnership; also, what his habits were as to economy; whether he made any money by operations outside of the firm; and if so, how?

53 Ans. 3. He had no family during the co-partnership, & his expenses were small. His expenses were always small, and he saved money as clerk every year. He made some money buying notes, but I cannot tell how much.

Quest. 4. State whether, from your knowledge of his means in business, he had funds, in your opinion, to the amount of $2,000, during & prior to the year 1861, which he could have loaned?

Ans. 4. I believe he had.

Quest. 5. State what you know in regard to the size of J. R. Alexander's family, and of his expenses, and his ability to meet his expenses, during & prior to the year 1861.

Ans. 5. In 1861 his family consisted of himself, his wife, three of his children, (two daughters & one son,) and one grand-child. Prior to that it was larger. He gave his children, or a part of them, good educations,

& from his circumstances I consider that his expenses were heavy. He did not meet his current expenses. He was not out of my debt, for goods sold to him, for twenty years, and perhaps longer. He
54 made partial payment & incurred new debts from year to year.

Quest. 6. Do you know of his borrowing any money, and how much, and from whom?

Ans. 6. Only from his own statement, that he had borrowed some money from Jos. H. Wilson, Stirewalt, & others, amounting to about $3,000, as I recollect.

Quest. 7. Do you know the general character of T. L. Alexander & J. R. Alexander; if so, state what it is.

Ans. 7. I do. They have each good character for honesty, integrity, & truth.

Re-examined by defendant:

Quest. 1. You state that J. R. Alexander was not out of your debt for twenty years or longer. Explain how this is, and state the habits of your firm in dealing with your customers.

Ans. 1. Our custom was to sell goods payable 1st of each January. If the customer did not pay the account at that time, we would take his note, & very often renewed these notes & take in subsequent accounts.
This was our manner of dealing with J. R. Alexander, and my
55 recollection is that the accumulated balances at the beginning of the war due from him was about $1,000. I think he dealt almost exclusively with my firm.

Quest. 2. Do you know of his paying the debts of J. H. Wilson, Stirewalt, Hays, or others spoken of above, previous to the date of the judgments of T. L. Alexander & Hattie J. Alexander.

Ans. 2. I do not.

Quest. Do you know, or can you state or set forth, any other matter or thing which may in anywise benefit either of the parties to this suit? If so, state it as fully as if you had been specially interrogated thereto.

Ans. T. L. Alexander became a partner in business with Brem, Brown & Co. in the fall of 1866, & has remained so up to this time. He has put in no capital, his interest in the business being his services. In estimating his property at $7,000, in 1860, I included his negro property, which I estimated at a little over two thousand dollars.

Further this deponent saith not.

T. H. BREM.

56 Sworn & subscribed before me this 16th June, 1871.

JOHN E. BROWN,
Commissioner.

Deposition of J. D. Keerans.

J. D. KERNS, a witness for defendant, having been called & sworn, testifies as follows:

Quest. 1. Are you acquainted with the parties to this suit?

Ans. 1. I am.

Quest. 2. State if you know John R. Alexander; how long you have known ; what property he had in May 1869, and its value.

Ans. 2. I have known John R. Alexander for more than twenty years. In May, 1869, he owned the plantation that he was living on, worth about $2,500; the Mallard Creek plantation, worth about $800; ten-acre tract, about $100; his personal property, worth about $1,000.

Quest. 3. State what your opportunity was for knowing these facts?
Ans. 3. I am a near neighbour of his, and acquainted with his property, & have been one of the assessors for the past three years.

57 Cross-examined by plaintiff:

Quest. 1. Do you know that Miss Hattie Alexander had a note on John R. Alexander? Did you bring said note to town to be sued on, & state what you know about it?

Ans. 1. I had the note of Miss Hattie Alexander in my possession, & when I was absent from home Mr. D. F. came to my house, as I learned, to get it & bring it to Mr. Samuel P. Alexander. (Objected to by defendant as hearsay.) In consequence of what I learned from my family on my return, I brought the note to town, & delivered it to S. P. Alexander. To the best of my recollection, Samuel P. Alexander told me that he thought that Mr. John R. Alexander was in bad condition, & he did not think he could pay his debts, & he wanted to try to save that debt. He thought he could get the old man to pay that debt, as he had been her guardian, & that was about all she had. I left the note with S. P. Alexander, & know nothing more of the matter.

58 Quest. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully & at large in your answer.

Ans. I do not think I do.

Further this deponent saith not.

J. D. KERNS.

Sworn & subscribed June 16, 1871, in presence of—
JOHN E. BROWN,
Comm'r.

Deposition of R. L. De Armand.

R. L. DE ARMAND, having been called by defendant & sworn, testifies as follows:

Quest. 1. Do you know the parties to this suit?

Ans. I do.

Quest. 2. Do you know John R. Alexander; if so, how long, & state as near as you can what his property consisted of in May, 1869, & what its value was, with your opportunities for knowing the same?

59 Ans. 2. I have known J. R. Alexander for more than thirty years. His property in May, 1869, consisted of real & personal property, set forth by J. D. Kerns in Ans. 2, examination-in-chief, & I agree with him in regard to its value. I am a neighbour of J. R. Alexander's, & have frequent intercourse with him.

Quest. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully & at large in your answer.

Ans. I do not think I do.

Further this deponent saith not.

R. L. DE ARMAND.

Sworn & subscribed before me this , 1871.
JOHN E. BROWN,
Comm'r.

Deposition of W. A. Williams.

Col. W. A. WILLIAMS, a witness for plaintiff, having been duly sworn, testifies as follows:

60 Quest. 1. Are you acquainted with the parties to this suit?
Ans. 1. I am.

Quest. 2. State what was your connection with the Bank of Charlotte during & prior to the year 1861; and do you know of any payment of money through the bank to T. L. Alexander? If so, state what it was.

Ans. 2. I have been for many years an officer in the Bank of Charlotte, N. C., & now have the books of said bank in my possession as an officer; and it appears therefrom that the firm of Thos. H. Brem & Co. drew sundry checks on said bank in favor of T. L. Alexander, & that the same were duly honored & paid, as follows:

April 3d, 1860,	check	.....	$1,13 185
Sept. 10th, 1860,	do.	.....	500 00
Feb'y 5th, 1861,	do.	.....	350 00
Mar. 1st, 1861,	do.	.....	900 00
April 12th, 1861,	do.	.....	204 65

And it also appears from said books that, on Nov. 19th, 1860, a check of R. Sturdivant, cash'r on the Bank of Commerce, New York, was paid to T. L. A., being for $850, as appears by entry in said
61 books. I cannot say that this was paid to T. L. Alexander, but, I believe it was paid to him, from the initials & other circumstances.

Quest. Do you know, or can you state or set forth, any other matter or thing which may or can in anywise benefit either of the parties to this suit? If so, state it as fully as if you had been specially interrogated thereto.

Ans. I know nothing further, except I know the men, & know them to be upright, honest, & truthful.

Further this deponent saith not.

W. A. WILLIAMS.

Sworn & subscribed before me this June 16th, 1871.

JOHN E. BROWN,
Comm'r.

Deposition of John R. Alexander.

JOHN R. ALEXANDER, introduced by the plaintiff, having been first duly sworn, deposeth and saith as follows:

Quest. 1. Do you know the parties to this suit?
Ans. 1. I do.

Quest. 2. State whether you owed T. L. Alexander any money before, during, & after the war. State the amount, what you owed it for & all you know about it.

62 Ans. I borrowed money at different times beforethe war from T. L. Alexander, & recollect borrowing one thousand dollars in 1861, and gave my notes for the amounts when borrowed. Cannot state the exact amount in all. After the war T. L. Alexander wanted me to renew the notes, but I refused to do it, on the ground that I believed all the old debts not renewed would be repudiated. Afterwards, I think in January, 1869, S. P. Alexander came to me to get me to renew them.

I refused to do it at first, & stated my reasons; but, after some conversation, Mr. Alexander satisfied me that there would be no repudiation, & after some persuasion on his part I renewed them, and gave the note to T. L. Alexander, upon which suit was shortly afterwards brought.

Quest. 3. Did you employ counsel to defend the suit on this renewed note of T. L. Alexander against you.

Ans. 3. I did employ counsel in this suit & all other suits against me about that time. In this case I employed H. Burwell, esq., an
63 attorney of the court, to put off the judgment as long as possible, and paid him a fee of ten dollars to attend to it. I also paid C. Dowd, esq., $10, & Osborne & Barringer $30, about the same time, for defending other suits brought against me.

Quest. 4. Why did you not come to court & look after these matters?

Ans. 4. I was sick and unable to attend; was confined to my bed most of the time. I wanted to come, but the doctor advised me that it would be dangerous for me to do so.

Before the court I told Gov. Vance if any other case came up against me at court to defend the suits.

Cross-examined by defendant:

Quest. 1. Did you renew any other notes besides T. L. Alexander's after the war?

Ans. 1. I did renew a note due Hattie J. Alexander, which was in the hands of S. P. Alexander at the same time I renewed T. L. Alexander's note. I also renewed one to Brem & Steele, & no others, to the best of my recollection. I was requested by Jos. H. Wilson, esq., to renew a note due to him before he brought his suit, & I declined to do
64 so, for the following reasons, which I stated: First, because I offered him confederate money in 1862 & he refused to take it, although he, as I understood, had taken it from other persons. I also offered him Charlotte Bank bills, in which bank he owned a large amount of stock, & he refused to take the bills. I was not asked to renew any other notes, that I recollect of.

Quest. Do you know any other matter or thing, &c.?

Ans. I know of nothing that I recollect of now.

JOHN R. ALEXANDER.

Sworn & subscribed in my presence this 16th Aug., 1871.

JOHN E. BROWN,
Commissioner.

Deposition of T. L. Alexander.

T. L. ALEXANDER, the plaintiff, having been sworn for himself, deposes & saith as follows:

Quest. 1. Are you the son of J. R. Alexander, & did you advance him the money for which the notes were given & afterwards renewed, & upon which this suit was brought?

65 Ans. 1. I am the son of John R. Alexander, and I did advance him the money for which the notes were given & afterwards renewed, & upon which the suit in question was brought. The amounts loaned up to January, 1861, in the aggregate, amounted to $1,800. In October of that year I loaned $190, or about that amount, and twenty dollars in January, 1869. These amounts, with interest, is the sum for which the renewal was given in January, 1869, and upon which I brought

suit. I do not know what John R. Alexander did with the money, but think it was used to pay his debts.

Ques. Do you know any other matter or thing, &c.?

Ans. I know nothing that I now recollect.

T. LAF. ALEXANDER.

Sworn & subscribed before me this 16th Aug'st, 1871.

JOHN E. BROWN, *Com'r.*

66 *Certificate of commissioner.*

UNITED STATES OF AMERICA,
District of North Carolina:

I, John E. Brown, commissioner appointed by the President of the United States of America to take depositions in the above cause, do certify that the matter set forth in the foregoing depositions was read in the hearing of the respective witnesses, & they were content therewith, and were duly qualified, & subscribed their names thereto.

Aug. 16th, 1871.

JOHN E. BROWN.
Commissioner.

67 *Transcript.*

T. L. ALEXANDER } Sup'r court.
vs.
J. R. ALEXANDER. }

STATE OF NORTH CAROLINA,
Mecklenburg County:

Be it remembered that T. L. Alexander, of said county & State, commenced a civil action against John R. Alexander, in the superior court of said county, on the 16th day of March, 1869, in the following words and figures, to wit:

Summons.

STATE OF NORTH CAROLINA,
Mecklenburg County:

T. L. ALEXANDER, PLAINTIFF, *against* JOHN H. ALEXANDER, DEFENDANT. } Superior court. Action for money demand.

To the sheriff of Mecklenburg County, greeting:

You are hereby commanded, in the name of the State, to summon John R. Alexander to appear at the office of the clerk of superior court of the county of Mecklenburg, at the court-house in Charlotte, within 20 days from *from* the service of this summons, then and there to answer the complaint of T. L. Alexander, plaintiff in this suit.

68 And you are further commanded to notify the said John R. Alexander that if he fail to answer the said complaint within the time specified, the said plaintiff will take judgment for two thousand nine hundred and sixteen dollars, ($2,916.00,) and interest from the first day of January, 1869, and for all costs and charges in this suit incurred.

Witness E. A. Osborne, clerk of the superior court of Mecklenburg County, at office in Charlotte, this 16th day of March, A. D. 1869.

[L. S.] E. A. OSBORNE,
Clerk Superior Court.

We acknowledge ourselves bound unto the defendant in this suit in the sum of two hundred dollars, in case the plaintiff fail in the prosecution thereof, to pay all costs, &c., according to act of assembly.

T. L. ALEXANDER. [SEAL.]

And on the return-day of the above-recited summons R. M. White, sheriff of said county, made the following return thereof, to wit:

69 "Executed by delivering a copy of the summons and complaint to defendant March 16th, 1869.

"R. M. WHITE, *Sh*

And at the time of commencing said action, viz, on the 16th day of March, 1869, a complaint was filed in the following words, to wit:

STATE OF NORTH CAROLINA,
Mecklenburg County:

T. L. ALEXANDER, PL'FF,
against
JOHN R. ALEXANDER, D'F'T. } Sup'r court.

The pl'ff, complaining, alleges:

I. That, on the first day of January, 1869, the defendant made his promissory note under seal, whereby he agreed to pay to the plaintiff the sum of two thousand nine hundred and sixteen dollars for value received one day after said date.

II. That no part of said note has been paid.

Wherefore pl'ff demands judgment for the said sum of two thousand nine hundred and sixteen dollars, with interest from said first day of Jan'y, 1869, & costs of action.

VANCE & DOWD,
Att'ys for Plaintiff.

70 T. L. Alexander makes oath that the facts stated in the foregoing complaint are true to the best of his knowledge and belief.

T. L. ALEXANDER.

Sworn to & subscribed before me, March 17th, 1869.

E. A. OSBORNE, *C. S. C.*

And at the return-day of said summons, it having made to appear to the court that all civil actions in the State made returnable before the clerk of the superior court must, according to an act of the general assembly, be continued to the next regular term of the superior court in the county in which said actions were brought, whereupon said cause was continued to the 8th Monday after the 4th Monday in March, 1869; at which last-mentioned term, before the honorable Geo. W. Logan, judge, the following judgment was rendered, to wit:

STATE OF NORTH CAROLINA,
Mecklenburg County:

T. L. ALEXANDER, PL'FF,
against
71 J. R. ALEXANDER, DEF'T.

At a superior court held at the court-house in Charlotte, in the county of Mecklenburg, on the 17th day of July, 1871.

Present, the Hon. G. W. Logan, judge 9th judicial district.

This action having been commenced on the 16th day of March, 1869, by personal service of the summons, with a copy of the complaint, on the defendant, John R. Alexander, and due proof having been filed of such service, and no answer or notice of appearance having been received from the defendant, it is now, on motion of Vance and Dowd, counsel for the plaintiff, adjudged that the plaintiff recover of the defendant, John R. Alexander, two thousand nine hundred and eighty-two $\frac{60}{100}$ dollars prin. & int., with $15.25, costs of action, making, together, two thousand nine hundred and ninety-seven eighty-five one hundredths dollars.

STATE OF NORTH CAROLINA,
Mecklenburg County:

Superior court.

72 I, E. A. Osborne, clerk of the superior court of said county, do hereby certify that the foregoing is a full, true, and perfect transcript of the record of said court in the case of T. L. Alexander against John R. Alexander, lately pending in said court.

In witness whereof I do hereunto set my hand and affix the seal of said court at office in Charlotte, this the 7th day of Aug., 1871.

[L. S.] E. A. OSBORNE,
Clerk Sup'r Court.

73 *Transcript.*

HATTIE J. ALEXANDER
vs.
JOHN R. ALEXANDER.

STATE OF NORTH CAROLINA,
Mecklenburg County:

Be it remembered that, on the 24th day of August, A. D. 1869, Hattie J. Alexander sued and prosecuted out of the superior court of the county aforesaid, a summons in these words, to wit:

STATE OF NORTH CAROLINA:

To the sheriff of Mecklenburg County, greeting:

You are hereby commanded, in the name of the State, to summon John R. Alexander to appear at the next term of the superior court of the county of Mecklenburg, at the court-house in Charlotte, on the 8th Monday after the 4th Monday in March, 1869, then and there to answer the complaint of Hattie J. Alexander, plaintiff in this suit. And you

are further commanded to notify the said John R. Alexander that if he fail to answer the said complaint within the time above specified, the said plaintiff will take judgment for two hundred and sixty dollars, with interest from the 5th day of March, 1869, and for all costs and charges in this suit incurred.

Witness, E. A. Osborne, clerk of the superior court of Meck-
74 lenburg County, this the 24th day of March, 1869.

E. A. OSBORNE, *Clerk.*

And on the return-day of said summons, to wit, on the 8th Monday after the 4th Monday in March, 1869, at the court-house in Charlotte, before the Hon. G. W. Logan, judge of said court, R. M. White, sheriff of said county, returns that he had executed the said summons. And thereupon the said Hattie J. Alexander, by her attorneys, Messrs. Vance & Dowd, comes and complains as follows:

STATE OF NORTH CAROLINA,
Mecklenburg County:

HATTIE J. ALEXANDER, PL'FF,
vs.
JOHN R. ALEXANDER, D'F'D'T. } Superior court.

The plaintiff, complainant, alleges:

I. That the defendant, on the 5th March, 1859, made his promissory note under seal, and delivered the same to the plaintiff, whereby he promised and obligated himself to pay the plaintiff two hundred & sixty dollars one day after said date. That no part of said note has been paid.

VANCE & DOWD,
Att'ys for Plaintiff.

75 And due proof having been filed of the service of said summons on the defendant, and no answer or notice of appearance having been received from the defendant, John R. Alexander, it is now, on motion of Vance & Dowd, counsel for the plaintiff, adjudged by the court that the plaintiff recover of the defendant, J. R. Alexander, two hundred and sixty-three $\frac{37}{100}$ dollars, principal & interest, with fifteen dollars cost of action, making, together, two hundred and seventy-eight $\frac{37}{100}$ dollars.

STATE OF NORTH CAROLINA,
Mecklenburg County:

I, E. A. Osborne, clerk of the superior court of the county and State aforesaid, do hereby certify that the foregoing contains a full, true, and perfect transcript of the record in an action of debt lately pending in said court between Hattie J. Alexander, plaintiff, and John R. Alexander, defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Charlotte, the 7th day of July, 1871.

[L. S.] E. A. OSBORNE,
Clerk Sup'r Court.

76 *Transcript.*

J. McHENDERSON
vs.
JOHN R. ALEXANDER.

STATE OF NORTH CAROLINA,
Mecklenburg County:

Be it remembered that, on the 25th day of September, A. D. 1869, the following transcript of a judgment granted by A. H. Martin, a justice of the peace for said county, was filed and docketted on the judgment-docket of the superior court of said county, to wit:

J. McHENDERSON, PL'FF,
vs.
JOHN R. ALEXANDER, D'F'T.

Befor' A. H. Martin, J. P. Judgment in the above-entitled action was rendered for the plaintiff and against the defendant the 25th day of September, 1869, for amount of one hundred & ninety-eight dollars $198 00
Costs 1 60

$199 60

A. H. MARTIN, *J. P.*

STATE OF NORTH CAROLINA,
Mecklenburg County:

I, E. A. Osborne, clerk of the superior court of the county and State aforesaid, do hereby certify that the foregoing contains a full,
77 true, and perfect transcript of a magistrate's judgment docketted in this office on the 25th September, 1869, wherein J. McHenderson is plaintiff and John R. Alexander defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, the 7th day of July, 1871.

[L. S.] E. A. OSBORNE,
Clerk Superior Court.

78 *Transcript.*

R. D. WHITLEY, EX'R.,
vs.
JOHN R. ALEXANDER.

STATE OF NORTH CAROLINA,
Mecklenburg County:

Be it remembered that, on the 9th day of April, A. D. 1869, Robert D. Whitley, as executor of S. D. Alexander, sued and prosecuted out of the superior court of the county aforesaid a summons in these words, to wit:

STATE OF NORTH CAROLINA:

R. D. WHITLEY, EXECUTOR OF S. D. ALEXANDER, plaintiff,
against
JOHN R. ALEXANDER, DEFENDANT.
} Mecklenburg County. Superior court.

To the sheriff of Mecklenburg County, greeting:

You are hereby commanded, in the name of the State, to summon

John R. Alexander to appear at the next term of the superior court of the county of Mecklenburg, at the court-house in Charlotte, on the 8th Monday after the 4th Monday in March, 1869, then and there to answer the complaint of R. D. Whitley, executor of S. D. Alexander, plaintiff in this suit. And you are further commanded to notify the said John R. Alexander that if he fail to answer the said complaint within
79 the time specified, the said plaintiff will take judgment against him for the sum of six hundred and sixty-five $\frac{95}{100}$ dollars, with interest on six hundred and sixty-four $\frac{45}{100}$ from the 22d day of July, 1861, to the 1st day of payment, and for all costs and charges in this suit incurred.

Witness E. A. Osborne, clerk of the superior court of Mecklenburg County, at office, in Charlotte, this the 9th day of April, A. D. 1869.

[L. S.] E. A. OSBORNE,
Clerk Superior Court.

We acknowledge ourselves bound unto the defendant in this suit in the sum of two hundred dollars, in case the plaintiff fail in the prosecution thereof, to pay all costs, &c., according to act of assembly.

[SEAL.]
[SEAL.]

And on the return-day of said summons, to wit, on the 8th Monday after the 4th Monday in March, 1869, at the court-house in Charlotte, before the Hon. G. W. Logan, judge of the said court, R. M. White, sheriff of said county, returns that he had executed the said summons.

And thereupon the said R. D. Whitley, as executor aforesaid, by his attorneys, Messrs, Jones & Johnston, comes and complains as
79 follows, to wit:

STATE OF NORTH CAROLINA,
Mecklenburg County:

R. D. WHITLEY, EX'T'R OF SALLIE D. ALEXANDER, plaintiff,
vs.
JOHN R. ALEXANDER, DEFENDANT. } Superior court.

The plaintiff, as executor of Sallie D. Alexander, complains and alleges:

I. That on the 29th day of December, 1858, at Charlotte, the defendant, John R. Alexander, made his promissory note in writing, under his hand and seal, and thereby promised to pay to Sallie D. Alexander or bearer eleven hundred and seventy $\frac{35}{100}$ dollars one day after date.

II. That the following payments have been made thereon: The sum of two hundred dollars on January 7th, 1859; the sum of one hundred and fifty dollars July 8th, 1860; and the further sum of three hundred dollars July 23d, 1861; but there is still due and owing thereon the sum of nine hundred and seventy-three $\frac{22}{100}$ dollars.

III. That after the making the said not, eand before the action,
81 the said Sallie Alexander died, leaving a will, by which the plaintiff was appointed the sole executor thereof.

IV. That at the July term, 1865, of the court of pleas and quarter sessions, the said will was duly proven and admitted to probate, and letters testamentary thereupon were therefore duly issued and granted

to the plaintiff as sole executor, and the plaintiff thereupon duly qualified as such executor, and entered upon the discharge of his said office.

Wherefore the plaintiff demands judgment against the defendant for the sum of six hundred sixty-five $\frac{45}{100}$ dollars, and interest thereon from July 23d, 1861.

JONES & JOHNSTON, *Atto's.*

And the said John R. Alexander, by his attorneys, Messrs. Osborne & Barringer, comes and pleads as follows, to wit:

NORTH CAROLINA, *Mecklenburg County:*

R. D. WHITLEY, EX'T'R OF S. D. ALEXANDER, pl'ff, *vs.* JOHN R. ALEXANDER, DEFENDANT. } Superior court.

82 The defendant, for answer to the complaint herein, says:

I. That he owed the testator of the plaintiff a note, as set forth in the complaint, but is unable to say that the amounts as stated are correctly given.

II. That for a defense thereto he sets up the following counter-claims, as follows:

Oct., 1864. 60 days board and nursing of said Sarah, at his house, while sick, $5.00 p'r day	$300 00
Medicines furnished and paid for by him	30 00
Jan'y 31st, 1865, paid R. F. Davidson, $300.00 Reduced without interest 150.00	150 00
Medical bill paid Dr. J. G. Ramsay	25 00
	$505 00

The above claimed as due in currency, counting no interest.

III. That defendant submits to a judgment for the balance, after deducting the above, at the term of the court when the plaintiff may be entitled thereto according to law.

OSBORNE & BARRINGER,
Att'ys for Defendant.

Defendant, J. R. Alexander, makes oath that the facts above set forth are true.

JOHN R. ALEXANDER.

Sworn to before me the 10th April, 1869.

E. A. OSBORNE, *C. S. C.*
By W'M MAXWELL, *D. C.*

83 And thereupon the said cause was continued until the next term of said court, and has since been regularly continued from term to term until the present time, and is now pending in said court for trial.

STATE OF NORTH CAROLINA,
Mecklenburg County:

I, E. A. Osborne, clerk of the superior court of the county and State aforesaid, do hereby certify that the foregoing contains a full, true and perfect transcript of the record in an action for debt now pending in

said court between Robert D. Whitley, executor of Sallie D. Alexander, plaintiff, and John R. Alexander, defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Charlotte, the 7th day of July, 1871.

[L. S.] E. A. OSBORNE,
Clerk Sup'r Court.

84 *Transcript.*

T. H. BREM
vs.
JOHN R. ALEXANDER.

STATE OF NORTH CAROLINA,
Mecklenburg County:

Be it remembered that, on the 26th day of May, A. D. 1869, the following transcript from J. N. Hunter, a justice of the peace for said county, was filed and docketed on the judgment-docket of the superior court of the county aforesaid, to wit:

T. H. BREM, SURVIVING PARTNER OF BREM & Steele, pl'ff,
vs.
JOHN R. ALEXANDER, DEFENDANT.

Justice's court. Before J. N. Hunter, J. P.

Judgment in this case is granted in favor of the plaintiff for debt and costs, as follows:

25th May, 1869.	Prin.....	$50 00
	Interest.....	25
	J. J. Sims, D. S.....	60
	Magistrate's costs.....	1 30
		$52 15

J. N. HUNTER, *J. P.*

STATE OF NORTH CAROLINA,
Mecklenburg County:

I, E. A. Osborne, clerk of the superior court for the county and State aforesaid, do hereby certify that the foregoing contains a
85 full, true, and perfect transcript of a magistrate's judgment docketed in my office on the 26th day of May, 1869, wherein T. H. Brem, surviving partner of Brem & Steele, is plaintiff, and John R. Alexander defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Charlotte, the 7th day of July, 1871.

[L. S.] E. A. OSBORNE.
Clerk Sup'r Court.

86 *Transcript.*

ALICE ALEXANDER,
vs.
JOHN R. ALEXANDER

STATE OF NORTH CAROLINA,
Mecklenburg, County:

Be it remembered that on the 22d day of April, A. D. 1869, Alice Al-

exander sued and prosecuted out of the superior court of the county aforesaid, a writ or summons in these words, to wit:

STATE OF NORTH CAROLINA,
Mecklenburg, County :

ALICE ALEXANDER, PLAINTIFF,
against
JOHN R. ALEXANDER, DEFENDANT. } Superior court.

To the sheriff of Mecklenburg County, greeting:

You are hereby commanded, in the name of the State, to summon John R. Alexander to appear at the next term of superior court of the county of Mecklenburg, at the court-house in Charlotte, on the 8th Monday after the 4th Monday in March, 1869, then and there to answer the complaint of Alice Alexander, plaintiff in this suit. And you are further commanded to notify the said John R. Alexander that if he fail to answer the said complaint within the time specified, the said plaintiff will take judgment for four hundred and fifty dollars, with
87 interest thereon from the 4th day of March, 1859, and for all costs and charges in the suit incurred.

Witness E. A. Orsborne, clerk of the superior court of Mecklenburg County, at office in Charlotte, this the 22d day of April, A. D. 1869.

[L. S.]

E. A. OSBORNE,
Clerk Superior Court.

And on the return-day of said summons, to wit, the 8th Monday after the 4th Monday in March, 1869, at the court-house in Charlotte, before the Hon. G. W. Logan, judge of said court, R. M. White returned that he had executed the said summons. And thereupon the said Alice Alexander, by her attorneys, Messrs. Vance & Dowd, comes and complains as follows, to wit:

STATE OF NORTH CAROLINA,
Mecklenburg County:

ALICE ALEXANDER, PLAINTIFF,
vs.
JOHN R. ALEXANDER, DEFENDANT. } Superior court.

88 I. The complaint of the above-named plaintiff respectfully shows to this court that on the 4th day of March, 1859, at Charlotte, N. C., the defendant, by his promisary note under seal, promised to pay W'm I. Hays, guardian of the said plaintiff, four hundred fifty dollars one day after date, which note was subsequently passed to pl't'ff for value, and is now her absolute and exclusive property.

II. That he has not paid the same, nor any part thereof. Therefore, the plaintiff demand judgment against the said defendant for the sum of four hundred & fifty dollars principle, with interest from the 4th day of March, 1859, together with all costs, disbursements, and expenses of this action.

VANCE & DOWD,
Pl'ff's Att'y.

And the said John R. Alexander, by his attorneys, comes and pleads as follows, to wit:

STATE OF NORTH CAROLINA,
Mecklenburg County:

Superior court.

I. The defendant, J. R. Alexander, for answer to the complaint in this case, says:

89 That for the debt sued on in this case the plaintiff, through her agent & late guardian, W. I. Hays, expressly agreed to take confederate money in payment of the same, and instructed the defendant to hold on to the money, which the defendant did for many months, when the said Hays, on a tender thereof, refused to receive the said confederate money.

II. The defendant has always relied on said express promise, & the refusal of the plaintiff to receive the said confederate money as a discharge of the said debt. Wherefore defendant demands, &c.

OSBORNE & BARRINGER,
Att'ys for Def't.

J. R. Alexander makes oath that the facts herein set forth are true to the best of his knowledge & belief.

JOHN R. ALEXANDER.

Sworn to and subscribed before me April 26, 1869.
E. A. OSBORNE, *C. S. C.*

And thereupon the said cause was continued until the next term of said court, and has been since regularly continued from term to
90 term until this term, and is now pending in said court for trial.

STATE OF NORTH CAROLINA,
Mecklenburg County:

I, E. A. Osborne, clerk of the superior court of the county and State aforesaid, do hereby certify that the foregoing contains a full, true and perfect transcript of the record in an action for debt now pending in said court between Alice Alexander, plaintiff, and John R. Alexander, defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Charlotte, the 6th day of July, A. D. 1871.

[L. S.] E. A. OSBORNE,
Clerk Superior Court.

91 *Transcript.*

STATE OF NORTH CAROLINA,
Mecklenburg County:

J. STIREWALT, G'D'N,
vs.
JOHN R. ALEXANDER.

Be it remembered that on the 8th day of March, A. D. 1869, J. Stirewalt, guardian, commenced a civil action against J. R. Alexander in the superior court of said county by issuing a summons in the following words, viz:

STATE OF NORTH CAROLINA:

J. STIREWALT, G'D'N, PL'T'FF,
against
J. R. ALEXANDER, DEF'T.

To the sheriff of Mecklenburg County, greeting:

You are hereby commanded, in the name of the State, to summon J. R. Alexander to be and appear at the office of the clerk of the superior court of said county, at the court-house, in Charlotte, within twenty days from the service of this summons, not including the day of such service, then & there to answer the complaint of J. Stirewalt, guardian, plaintiff in this suit, and you are further commanded to notify said defendant that if he fail to answer said complaint within the time above specified said plaintiff will demand judgement for $933.38,
92 with compound interest from date of note, and for all costs and charges in this suit incur'ed.

Witness, E. A. Osborne, clerk of our superior court for the county of Mecklenburg, at office in Charlotte, this the 8th day of March, 1869.

E. A. OSBORNE, *C. S. C.*

And on the return day of said summons R. M. White, sheriff of said county, returned that he had executed the same, by delivering a copy thereof to the defendant, J. R. Alexander, on March 13th, 1869, and at the same time comes the plaintiff by R. Barringer, esq'r, his attorney, and complains as follows, viz:

STATE OF NORTH CAROLINA:
Mecklenburg County:

J. STIREWALT, GUARD. OF THE MINOR HEIRS
of J. W. Miller, pl'tiff,
against
JNO. R. ALEXANDER.

Superior court.

The complaint in this case shows:

I. That on the 11th of June, A. D. 1860, the defendant made a certain sealed note, thereby promising to pay, one day after date, to the
93 plaintiff nine hundred and thirty-three $\frac{35}{100}$ dollars. That there is due thereon the sum of $933.35, with compound interest from date of note, for which judgement is demanded with costs of their action.

J. R. BARRINGER, *Att'y.*

R. Barringer, att'y for the plaintiff, makes oath that this complaint is true as to all mat'ers in his own knowledge, and those not of his own knowledge he is informed and believes to be true; and that the claim sued on is in possi'sion.

R. BARRINGER.

Sworn to and subscribed before me this the 8th day of March, A D. 1869.

E. A. OSBORNE, *C. S. C.*

And at the same time the following prosecution-bond was given, viz:

We agree to pay to the defendant two hundred dollars, to be void if the plaintiff pay all costs the defendant may recover in this action.

[SEAL.] R. BARRINGER.

And, therefore, said cause was continued, in accordance with an act of the general assembly of North Carolina, until the 8th Monday after the 4th Monday in March, 1869, at which last-mentioned term, at
94 the court-house in Charlotte, before the Hon. G. W. Logan, judge, said cause was again continued to the next term of said court, and thereupon, in like manner, said cause was continued from term to term until the 8th Monday after the 4th Monday in March, 1870.

I, E. A. Osborne, clerk of the superior court of Mecklenburg County, do hereby certify that the foregoing is a full, true, and perfect transcript of the records of said court in the case of J. Stirewalt, guardian, plaintiff, against J. R. Alexander, defendant.

In witness whereof I do hereunto set my hand and affix*ed* seal of said court, at office in Charlotte this the 19th day of June, A. D. 1873.

E. A. OSBORNE, *C. S. C.*

95 *Transcript.*

A. M. BARRY & J. F. HARRY
vs.
JOHN R. ALEXANDER.

STATE OF NORTH CAROLINA,
Mecklenburg County:

Be it remembered that, on the 12th day of March, 1869, A. M. Barry and J. F. Harry, administrators, with the will annexed, of Jane Barry, commenced a civil action in the superior court of said county against J. R. Alexander by issuing a summons in the following words, viz:

STATE OF NORTH CAROLINA:

A. M. BARRY & J. F. HARRY, ADM'S, WITH THE will annexed, of Jane Barry, plaintiff,
against
JOHN R. ALEXANDER, DEF'T.

To the sheriff of Mecklenburg County, greeting:

You are hereby commanded, in the name of the State, to summons John R. Alexander to appear at the office of the clerk of the superior court of the county of Mecklenburg, at the court-house in Charlotte, within twenty days from the service of this summons, exclusive of the day of such service, then and there to answer A. M. Barry and J. F. Harry, adm's, with the will annexed, of Jane Barry, plaintiffs in this suit; and you are further commanded to notify said John R. Alexander that if he fail to answer said complaint within the time specified, the said plaintiffs will demand judgment against him for one thou-
96 sand and sixty dollars, with interest thereon from the 15th of November, 1864, and for all costs & charges in this suit incurred.

Witness E. A. Osborne, clerk of our superior court of Mecklenburg County, at office in Charlotte, this 12th day of March, 1869.

E. A. OSBORNE, *Clerk.*

And at the return time of said summons, R. M. White, sheriff of said county, returned that he had executed the same by delivering a copy of the same to the defendant, J. R. Alexander, on March 13th, 1869. And at the same time comes the plaintiff, by his attorney, J. H. Wilson, attorney, and complains as follows:

Superior court.

STATE OF NORTH CAROLINA,
Mecklenburg County:

A. M. BARRY & J. F. HARRY, ADM'S, WITH THE will annexed, of Jane Barry, plaintiffs,
against
JOHN R. ALEXANDER, DEFENDANT.

The plaintiffs complain and alle*d*ge:

I. That, on the 15th of November, 1864, the defendant made his promissory note, under seal, and promised to pay to plaintiffs one thousand and sixty dollars, six months after date, with interest from date.

II. That no part thereof has been paid; whereupon plaintiffs
97 demand judgment of defendant for one thousand and sixty dollars and interest from the 15th day of November, 1864, & costs of action.

WILSON, *Atto. for P'ffs.*

J. F. Harry maketh oath that the facts set forth in the foregoing complaint as of his own knowledge are true, and those as of his information & belief he believes to be true.

J. F. HARRY.

Sworn and subscribed before me the 11th day of March, 1869.

E. A. OSBORNE, *C. S. C.*

And at the same time comes the defendant John R. Alexander, by his attorneys, Messrs. Vance and Dowd, and answers as follows, v'z:

Mecklenburg County superior court.

A. M. BARRY AND J. F. HARRY, ADM'S, WITH the will annexed, of Jane Barry,
against
J. R. ALEXANDER.

Answering the complaint in the above stated cause, the defendant Alexander says:

I. That the note in the complaint mentioned was given in purchase of a negro*e*, who of right and according to law, as defendant is informed and believes, was a free person; and not, therefore, the subject of
98 contract, nor a valid and legal consideration for said notes.

II. That the defendant signed said note as surety only, the

principal, B. W. Alexander, being deceased, & his estate having assets, as defendant is informed and believes.

VANCE & DOWD,
Atto's *J. R. Alexander.*

Sworn to & subscribed before me, March 13, 1873.
E. A. OSBORNE, *C. S. C.*

And, therefore, said cause was continued under an act of the general assembly of North Carolina, until the 8th Monday after the 4th Monday in March, 1869, at which last mentioned term before the Hon. G. W. Logan, judge of said court, at the court-house in Charlotte, said cause was continued to the next term of said court, and thereafter in like manner, said cause was continued to the next term of said court, and thereafter in like manner, said cause was continued from term to term until the 8th Monday after the 4th Monday in March, A. D. 1870.

I, E. A. Osborne, clerk of the superior court of Mecklenburg County. do hereby certify, that the foregoing is a correct transcript of the record of said court in the suit lately pending therein, wherein A. M. Barry and J. F. Harry, adm's, with the will annexed, of Jane Barry, were plaintiffs, and John R. Alexander, was def't.

In witness whereof I do hereunto set my hand, and affix the
99 seal of said court at office in Charlotte, this the 17th day of June, A. D. 1873.

[L. S.] E. A. OSBORNE, *Clerk.*

Transcript.

JOSEPH H. WILSON
vs.
JOHN R. ALEXANDER.

STATE OF NORTH CAROLINA,
Mecklenburg County:

Be it remembered that, on the 1st day of February, A. D. 1868, Joseph H. Wilson, sued and prosecutted out of the superior court of law of the county aforesaid a writ in these words, to wit:

STATE OF NORTH CAROLINA:

To the sheriff of Mecklenburg County, greeting:

You are hereby commanded to summons John R. Alexander, if to be found in your county, to be and appear before the judge of our court of law at the next court to be held for the county of Mecklenburg, at the court-house in Charlotte, on the 9th Monday after the last Monday in February next, then and there to answer Joseph H. Wilson, of a plea that he render unto him seven hundred & fifty dollars, which he owes and detains to his damage, six hundred dollars.

Herein fail not, and have you then & there this writ.

Witness E. A. Osborne, clerk of our said court, at office, the 9th Monday after the last Monday in Aug., A. D. 1869, and in the 92 year of American Independence.

Issued the 3rd day Feb'y, 1868.

E. A. OSBORNE, *Clerk.*

100 And on the return day of said writ, to wit, the 9th Monday after the last Monday in Feb'y, A. D. 1868, at the court-house in Charlotte, before the Hon. Anderson Mitchell, judge of said court, R. M. White, sheriff of said county, returns that he had executed the said writ. And thereupon the said Joseph H. Wilson, by his attorneys, Messrs. Vance & Dowd, comes and complains as follows: (No complaint filed.) And the said John R. Alexander, by his attorneys, Messrs. Osborne and Barringer, comes and pleads as follows, to wit: (No pleas filed.) And thereupon the said cause was, and has been regularly continued from time to time until the present term, and is now pending in said court for trial.

STATE OF NORTH CAROLINA,
Mecklenburg County:

I, E. A. Wilson, clerk of the superior court of the county & State aforesaid, do hereby certify, that the foregoing contains a full, true, & perfect transcript of the record in an action for debt now pending in said court, between Joseph H. Wilson, plaintiff, and Jno. R. Alexander, defendant.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court at office, in Charlotte, the 6 day of July, A. D. 1871.

[L. S.] E. A. OSBORNE.

101 [Form No. 13.]

List of creditors' certificates.

Creditors who have proved their debts at first meeting.

In the district court of the United States for the Cape Fear dist. of North Carolina.

IN THE MATTER OF JOHN R. ALEXANDER, BANKRUPT. } In bankruptcy.

At Charlotte, in said district, on the 16th day of November, A. D. 1870, before Mr. R. H. Broadfield, register in bankruptcy.

DISTRICT OF CAPE FEAR, *North Carolina:*

The following is a list of creditors who have this day proved their debts:

Names of creditors.	Residence.	Debts proved.
No. 1. R. Barrenger	Charlotte, N. C.	45 35
2. R. D. Whitley	Hopewell, "	1,036 78
3. J. Stiwalt	Concord, "	1,713 33
4. J. H. Wilson	Charlotte, "	885 00
5. J. M. Henderson	Charlotte, "	198 00
6. A. M. Barry	Hopewell, "	1,060 00

I, Robert H. Broadfield, one of the registers of said court, in bankruptcy, do hereby certify that the above list of debts proved against the estate of John R. Alexander, bankrupt, is a true copy.

July 11, 1871.

R. H. BROADFIELD,
Register in Bankruptcy.

102 *Agreement.*

And on the day last aforesaid, the following agreement of counsel of the respective parties was filed, in the words & figures following, to wit:

UNITED STATES OF AMERICA,
Dist. of North Carolina:

W'M P. LITTLE, ASSIGNEE OF JOHN R. ALEXander, bankrupt, *against* T. L. ALEXANDER. } Circuit court. In equity.

In this cause it is agreed, by consent of parties, that the same be set for hearing at next term of this court, upon the pleadings, exhibits, and proofs heretofore filed; and it is further agreed that either, upon five days' notice to the opposing party, may, until the first day of the next term, take such additional proofs & depositions as he may deem proper.

Apr. 30, 1872.

JONES & JOHNSTON,
Sol. for Pl'ffs.
DOWD, *for Def't.*

103 And afterwards, to wit, at a regular stated term of the said circuit court, begun and holden at Raleigh, in said district, the following further proceedings were had in said cause: By virtue of an act of Congress entitled, An act to establish a western judicial district of North Carolina, approved June 4, A. D. 1872, upon application of the defendant, this case is transferred to the United States circuit court, to be held at Statesville, on the third Monday in October next, and the order of transfer, made by the said court in said case, is in the words and figures as follows, to wit:

104 In the United States circuit court, eastern district of North Carolina, June term, 1872.

Order of transfer.

WM. P. LITTLE, ASSIGNEE, *vs.* T. L. ALEXANDER. } In equity. No. 27.

Upon application of the defendant, it is ordered by the court here that this case be transferred to the circuit court of the United States to be held for the western district of North Carolina, in the town of Statesville, on the third Monday in October next; and the clerk of this court is hereby ordered to transmit with this order and certificate the bill of complaint, answers, pleas, process, orders, and proceedings pending in this court in this case.

Pursuant to the foregoing order, all papers, &c., are sent to the s'd court.

A true copy from the minutes:

In testimony of which, I hereunto subscribe my name and affix the seal of said court at office in Raleigh, this 19th day of September, A. D. 1872.

[L. S.]

N. J. RIDDICK,
Clerk U. S. Circuit Court, East'n Dist. N. C.

105 And afterwards, in pursuance of said order of transfer, to wit, at a regular stated term of the circuit court, begun and holden at the town of Statesville, in the western district of North Carolina, on the third Monday in October, A. D. 1872, the following further proceedings were had in said cause on Monday, the twenty-first day of October, A. D. 1872. The foregoing bill, exhibits, pleadings, agreements, orders, depositions, transcripts, and other proceedings were filed in the office of the clerk of the said circuit court at Statesville, together with the certificate of the clerk of the circuit court at Raleigh, for the eastern district of North Carolina, in the words & figures following, viz:

UNITED STATES OF AMERICA,
Eastern District of North Carolina, ss:

I, N. J. Riddick, clerk of the circuit court of the United States for said district, do certify that the foregoing contains a true, perfect, and complete transcript and exemplification of the docket-entries of proceedings had in the above-entitled cause, made and certified from the record, in accordance with the direction of said court.

Given under my hand and the seal of the said court, this 19th day of September, A. D. 1872.

[SEAL.]

N. J. RIDDICK,
Clerk U. S. Circuit Court, East'n Dist. of N. C.

106 And at the said last-mentioned stated term of said circuit court, the following further proceedings were had in said cause, viz: Complainant in said cause, by his solicitors, files his replication to the answer of the said defendant; which said replication is in words and figures as follows, viz:

UNITED STATES OF AMERICA,
District of North Carolina:

WILLIAM P. LITTLE, ASSIGNEE OF JOHN R. Alexander, a bankrupt, pl'ff, *against* T. L. ALEXANDER. } Circuit court. In equity.

The plaintiff in this cause, replying to the several matters in the answer of defendant set out, for replication thereto, says that he denies each and every allegation in the said answer contained.

JONES & JOHNSTON,
Sol's for Pl'ff.

107 And afterwards, to wit, at said last-mentioned regular stated term of said court, begun and holden as aforesaid, the following proceedings were had in said cause, to wit: The said cause was heard, and thereupon submitted to the court, upon the pleadings, proofs, and arguments of counsel, and the following decree was filed in the words and figures following, to wit:

108 *Decree.*

WILLIAM P. LITTLE, ASSIGNEE, *v.* T. L. ALEXANDER. } Bill in equity for an injunction.

Upon hearing the pleadings, exhibits, and depositions filed, and care-

fully considering the elaborate argument of council, I find the following facts in relation to the matter in controversy as fully established:

1st. On the 1st day of January, 1869, John R. Alexander was largely indebted to various creditors, and had not property sufficient to pay his debts, and these facts were known to the said John R. Alexander and the defendant, T. L. Alexander.

2nd. That the said John R. Alexander was justly indebted to this def't, and that the promis'ory note mentioned in the pleadings as executed on the 1st of January, 1869, was in renewal of former bona-fide notes which evidenced such indebtedness.

3rd. That an action at law was commenced on said renewed note on the 16th day of March, 1869, in the superior court for Mecklen-
109 burg County; that "judgment for the want of an answer" was entered at spring term, 1869, of said court; that this judgement was duly docketed on the 19th day of May, 1869; that an execution on the same was issued on the 17th of June, and was levied on the lands of John R. Alexander on the 14th day of August, 1869; and that this def't was about to enforce a sale of said land, when the writ of injunction in this cause was granted.

4th. That some of the other creditors of John R. Alexander had commenced action upon their debts, and failed to obtain judgment at said spring term, because a defence was put in by said Alexander, which, according to the course and practice of the court, delayed the trial of such causes.

5th. That the said John R. Alexander was duly adjudged a bankrupt in the district court of Cape Fear upon a petition filed by creditors on 1st Sept., 1869, within a period of four months after the judgement of the said T. L. Alexander was obtained and docketed.

The renewal of the note on the 1st of January, 1869, was a bona-fide transaction, and in no way gave a preference to T. L. Alexander over other creditors which can be regarded as fraudulent at common
110 law by the laws of this State, or under the bankrupt act. The statute of this State (usually called the stay-law) in relation to debts contracted previous to the 1st day of May, 1865, was unconstitutional, and was so declared by the supreme court of this State at January term, 1869, in the case of Jacobs vs. Smallwood, (63 N. C., 112.)

All creditors of J. R. Alexander, whether they held old or new notes, had like remedies in law, and were entitled to stand upon equal footing in the court at spring term, 1869; and if any legal rights were denied a creditor by the ruling of the judge, he has no just cause to complain of another creditor who obtained an honest advantage by persuing the lawful course and practice of the court. An insolvent person merely allowing a judgement to be taken for the want of an answer, by which one creditor obtained preference over other creditors is not an act of bankruptcy under the statute, and the judgement is not, per se, fraudulent and void.

The omission to plead must be voluntary, and with intent to defraud the general creditors by giving a preference to a particular creditor, and these facts are to be proved by direct testimony, or they may be inferred from the circumstances attending the transaction. If
111 the circumstances under which the judgement by default was allowed by the debtor, were sufficient to constitute an act of bankruptcy, then the creditor who received such judgement, or was benefited thereby, within a period of four months before proceedings in bankruptcy filed, knew, or had reasonable cause to believe, that the debtor subsequently declared a bankrupt, was insolvent, and that

such judgement was allowed by the debtor in fraud of the bankrupt act, then such judgement, in contemplation of a court of bankruptcy, is void, and the assignee is entitled to such relief in the circuit or district courts of the United States against the action of the creditor under such judgement as will enable him properly to administer the assets of the bankrupt.

In the case before us, the intent of preference and all collusion is positively denied in the answer and depositions by both parties to the judgement, and there is no direct evidence sustaining contrary averments; and both of said parties are proved to be men of good credit and character.

The facts that the relation of father and son existed between said parties; that the son obtained judgement by default when other creditors of the father were prevented at the same term of the court from obtaining judgement, because pleadings for that purpose were en-
112 tered, and other incidental circumstances mentioned in the evidence, filed in the cause, have a strong tendancy to show that the allegations of fraud and collusion, made by the plaintiff, are well founded.

It is, however, insisted by defendant, that the judgement was obtained according to the course and practice of the court; that it is not fraudulent at common law, or under any of the laws of the State, and such transaction is not essentially immoral or dishonest; that the bankrupt law in refusing to allow a person, declared to be a prefer'ed creditor, any portion of the assets of the bankrupt, is highly penal and ought to be strictly construed; and, in a case like the one before us, there should be no intendments but those which are fully sustained by the evidence, or which arise from strong legal inference. This conflict of inferences arising out of the evidence, renders it proper that the contraverted questions of fact should be determined by a jury. It is therefore ordered that the proper issues be prepared by the counsel of the plaintiff presenting the questions of fact as above indicated, and be submitted to a jury at the next term of this court, to be heard and determined upon the pleadings and proof filed in this cause.

113 Various questions of law were presented in the argument which can now be determined, so that the case may be placed in a condition to be finally disposed of at the next term, when the verdict of the jury is rendered on the issues submitted.

The council of the defendant insists "that the court being restrained by the process act of 1793, cannot grant the relief to stay proceedings in the State court." To determine this question we must briefly consider the nature and extent of the equitable jurisdication of this court. The circuit courts of the United States are created and invested with jurisdiction by acts of Congress; and in all cases to which the judicial power of the United States may extend that jurisdication, both in law and equity, may be made superior and exclusive. In a certain class of cases the jurisdication of these courts is made concurrent with the jurisdication of the State courts.

The Federal and State courts are separate and independent tribunals, and in all cases where they may exe'cise concurrent jurisdication they carefully avoid a conflict by uniformily observing the well-settled rule that the court that first takes possession of the controversy, or
114 the property in dispute, must be allowed to dispose of it finally without interference or interruption from the co-ordinate court. In all cases where the jurisdication of the Federal courts is made original and exclusive, it is also necessarily superior, and all actions of State

courts upon such questions, are regarded as nullities by the Federal courts. How far the judicial power of the United States may be extended, under the Constitution, is always a question for the legislative wisdom and discretion of Congress in enacting a statute on the subject, and the constitutionality of such statute when questioned, can only be determined by the judicial department of the General Government.

The United States circuit courts within the limits of their authority, as prescribed by statute, are invested with such equitable jurisdiction as is usually exercised by a court of chancery; and in all cases coming within their cognizance, when equitable elements are involved, may restrain persons within their jurisdiction from proceeding in any of the courts of law of the United States, or in any foreign court, so that they may adjust and determine all equities between the litigant parties.

115 This injunctive relief against proceedings in another court is not effected by any prohibition directed to such court, but by process restraining the plaintiff personally from taking further steps.

The writ of injunction in no way affects or interferes with the action of the court in which the proceedings are pending; it assumes no superiority over such court, or denies it its jurisdiction. (Story Eq., sec. 875; Adams Eq., 195.)

If the act of Mar. 2d, 1793, had never been passed, a circuit court of the United States, in exercising its equitable jurisdiction, as other courts of chancery, would hardly have issued a writ of injunction directed to a State court. It may be that said act was intended to prevent a writ of injunction from being issued to a party to prohibit him from carrying on proceedings in a State court; but certainly such statutory restraint can only apply when the State court has full and concurrent jurisdiction with the Federal court, of the parties and subject-matter in dispute.

The original and exclusive jurisdiction of the United States courts would amount to but little, if they had no power to maintain, secure, and enforce it by proper process, against persons who seek to

116 evade, or who openly disregards and defy their authority.

The Constitution invests Congress with the authority to establish uniform bankrupt laws, and when such authority is exercised the act of Congress supersedes all State legislation on the subject, and all rights and liabilities subsequently arising under such bankrupt act can only be heard, adjusted, and determined, in the courts of the United States, unless otherwise provided in such acts. A national bankrupt law is a supreme law of the land, and the courts of this State are as much bound to observe its provisions as if it had been enacted by our State legislature. Under the bankrupt act, proceedings in bankruptcy must be commenced in the U. S. dist. courts, and such courts have full and complete jurisdiction, both in law and in equity, over all matters relating to the settlement of the estates of bankrupts; and for such purposes do not need the active assistance of any other court. Congress, however, in its wisdom, has seen proper to confer upon circuit courts concurrent jurisdiction with the district courts of the same district, in certain cases where the title of property of the bankrupt is in dispute, or the

117 claim of the assignee to the assets is denied, embarrassed, or resisted; and where liens and priorities are to be ascertained, adjusted, and enforced, by the methods usually resorted to by courts of chancery.

After consulting many of the adjudged cases refer'ed to by counsel, making a fair and reasonable construction of the statute, and keeping in view the purposes for which the bankrupt system was established, we are well satisfied that this court, in the exercise of its equitable juris-

diction, can declare void any transfer of the property of a bankrup which is fraudulent under the bankrupt act; and may, by writ of injunction, restrain any party to such fraud, from attempting in any manner to carry out the fraudulent transaction.

The subject of controversy in this case comes fully within the jurisdiction of this court. A docketed judgement under the laws of this State is a security for money, and has the force and effect upon the land of the judgement debtor, of a mor'gage after the time of redemption has passed, (Perry vs. Morris, 65 N. C., 221,) and comes within the meaning of the 35th section of the bankrupt act. If a jury at the next term, in passing upon the issues directed to be submitted, shall find such a state of facts as will authorize us to pronounce the judgement in ques-
118 tion in this case fraudulent and void, we shall not hesitate to issue a writ of injunction to protect the rights of bona-fide creditors, and prevent guilty parties from deriving any benefit from a fraudulent transaction.

The objection to the plaintiff's bill for the want of proper parties cannot be sustained. It appears that the plaintiff, as assignee, offered the land in question for sale, and after consultation with the creditors of the bankrupt, and for the purpose of securing a fair price for said land, requested Robert D. Whitney to bid at the sale for the benefit of the creditors. At the sale the said Whitley was declared to be the last and highest bidder, but no conveyance has been made to him. He was merely an agent and has no personal interest in the matter.

The general rule in a court of equity upon this question is, that all persons must be made parties to a suit who are interested in the subject-matter in dispute, whose rights may be affected by the proposed decree, or whose concurrence is necessary to a complete arrangements.
119 (Adams Eq., 3, §12.) A person who merely acts as the agent of another in purchasing at a sale the property in dispute, has no interest in the subject, and is not a necessary party. In such a case all difficulty may be avoided by the agent filing a written renunciation of all interest in this suit before a final decree is made. (Danl. Ch. Pr., 191; Ayres vs. Wright, 8 Iredell's Eq., 229.)

The injunction in this case is continued until the cause is heard upon the verdict of the jury on the issues directed to be submitted.

ROB'T P. DICK,
U. S. Dist. Judge.

120 And afterwards, to wit, at said last-mentioned regularly stated term of said court, an order of the court was made in words & figures following, viz:

In the circuit court of the United States for the western district of North Carolina. In equity.

At a stated term of the circuit court of the United States of America, for the western district of North Carolina, sitting in equity, held at the town of Statesville, on the 3rd Monday of October, in the year of our Lord eighteen hundred and seventy-two—present, the honoreble Robert P. Dick, judge of the same:

WILLIAM P. LITTLE, ASSIGNEE IN BANK-
ruptcy of John R. Alexander,
against
T. L. ALEXANDER.

To aid the court in deciding a question of fact in the cause, not

already found, it is ordered that the following issue be submitted to and be tried by a jury at the next term of the circuit co'rt of the United States for the western district of North Carolina, to be held at Statesville, on the 3rd Monday in April next:

"Did John R. Alexander allow judgment by default to be entered against him, at spring term, 1869, of Mecklenburg superior court,
121 in the action of T. L. Alexander, with a view to give a preference to the said T. L. Alexander, over other creditors?"

And it is further ordered that upon the trial of said issue the pleadings and proofs filed in the cause shall be used as testimony.

ROBERT P. DICK, *Judge.*

122 And, afterwards, to wit, at the said last-mentioned regular stated term, following further proceedings were had in said cause, to wit, the disclaimer of R. D. Whitley, in the words & figures following, was filed by order of the court, to wit:

In the circuit court of the United States for the western district of North Carolina, at Statesville. Spring term 1873.

W. P. LITTLE, ASSIGNEE, &co.,
vs.
T. L. ALEXANDER.

I, Robert D. Whitley, do hereby disclaim and renounce all interest in the property of John R. Alexander bid off by me at the sale made by plaintiff as assignee, &co., and to any conveyance therefor; and I also disclaim all interest in the above-named cause, except such as I may have as a creditor of said John R. Alexander.

April 25th, 1873.

R. D. WHITLEY,
B' R. D. JOHNSON.

And afterwards, to wit, at the said last-mentioned regular stated term, the following verdict, by the jury empanelled to try said issues, was rendered and ordered to be certified, viz:

123 *Verdict.*

In the circuit court of the United States for the western district of North Carolina.

At a stated term of the court aforesaid, held in the town of Statesville, on the third Monday of April, in the year of our Lord eighteen hundred and seventy-three—present, the honorable Robert P. Dick, judge of the same:

WILLIAM P. LITTLE, ASSIGNEE IN BANKRUPTCY of John R. Alexander,
vs.
T. L. ALEXANDER.

The feigned issue joined between said parties, as follows: "Did John R. Alexander allow judgment by default to be entered against him at spring term, 1869, of Mecklenburg superior court, in the action of T. L. Alexander, with a view to give a preference to the said T. L. Alexander over other creditors?"

On the 24th day of April, at the court aforesaid, before the honorable Robert P. Dick, judge presiding, came on to be tried, and the plaintiff & defendant, by their respective attorneys, and the following jurors of the jury summoned to try the said issue, to wit: J. M. Matheson,
124 A. Maberry, Sidney Murdock, E. L. Presnell, Milus Ritchie, S. P. Smith, David McClain, James Simmons, W. E. Lorance, Thomas Holcombe, Burton McNeely, & J. C. Anderson, being called, also come, who, to speak the truth of the matters aforesaid, being chosen, tried, and sworn, upon their oath do, after retiring & considering of their verdict, come into court & say:

That said John R. Alexander did not allow judgment by default to be entered against him at spring term, 1869, in the action of T. L. Alexander, with a view to give a preference to the said T. L. Alexander over other creditors.

And it is thereupon ordered that said trial & verdict be certified as a part of the record in the said cause.

ROB'T P. DICK.

125 *Final decree.*

In the circuit court of the United States for the western district of North Carolina, in equity, final decree, the following further proceedings were had:

At a stated term of the court aforesaid, sitting in equity, held at Statesville, on the 3rd Monday in April in the year of our Lord eighteen hundred and seventy-three—

Present, the honorable Robert P. Dick, joudge of the same.

WILLIAM P. LITTLE, ASSIGNEE IN BANKruptcy of John R. Alexander
vs
T. L. ALEXANDER.

This cause coming on to be further heard upon the proof and the trial-record of the issue submitted to a jury, according to the order made in their cause at the last term, and it appearing that the jury impanneled to try the same have rendered as their verdict, "That said John R. Alexander did not allow the judgement by default (in the pleadings mentioned) to be entered against him at spring term, 1869, in the action of T. L. Alexander, with a view to give a preference to the said T. L.
126 Alexander over other creditors," and the said matter being agreed by council on both sides; and thereupon and in consideration thereof, the court doth approve said verdict, and declares that the said John R. Alexander did not suffer such judgement in the pleadings mentioned, to be taken against him by default with any intent to secure a preference to the said T. L. Alexander over other creditors of him the said John R. Alexander; and that the said judgment was not, and is not fraudulent within the provisions of the bankrupt act. And it is therefore ordered, adjudged, and decreed, that the complainant's said bill of complaint be, and the same is hereby, dismissed with costs to the defendants to be taxed.

April 25th, 1873.

ROBERT P. DICK, *Judge.*

127 And afterwards, to wit, at said regular stated term of said circuit court, begun and holden as aforesaid, following further pro-

ceedings were had in said cause, to wit: The complainant comes, by his solicitors, Messrs. Jones & Johnston, and in open court prays an appeal to the Supreme Court of the United States from the decree rendered by this court in the said caused during this term, and thereupon it is ordered, that the said appeal be allowed. Citation to the defendant waived by the defendant' counsel in open court; and the said appellant having presented his bond of appeal to the court, said bond is approved, and made part of the record herein. Said appeal bond is in the words and figures following, to wit:

128 *Bond of appeal.*

Supreme Court of the United States.

WILLIAM P. LITTLE, ASSIGNEE IN BANKruptcy of John R. Alexander,
against
T. L. ALEXANDER.

Know all men by these presents that we, William P. Little, R. Barringer, H. G. Springs, and R. D. Whitley, are held and firmly bound unto T. L. Alexander, in the sum of five hundred dollars, to be paid to the said T. L. Alexander, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this day of April, 1873.

Whereas the above-named William P. Little, assignee of John R. Alexander, hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the western district of North Carolina, at Statesville: Now, therefore, the condition of this obligation is such, that if the above-named William P. Little shall prosecute his
129 said appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

W'M P. LITTLE, *Assignee.* [L. S.]
RUFUS BARRINEER. [L. S.]
H. G. SPRINGS. [L. S.]
R. D. WHITLEY. [L. S.]

Sealed and delivered in the presence of—
R. D. JOHNSTON.

I certify that the bond is amply solvent.

F. W. AHERNS,
U. S. Commissioner.

Approved:

ROBERT P. DICK,
U. S. Dist. Judge.

130 UNITED STATES OF AMERICA,
Circuit Court of the West'n Dist. of North Carolina, at Statesville, in said District:

I, H. C. Cowles, clerk of the circuit court of the United States, in and for the western district of North Carolina, at Statesville, in said district,

do hereby certify the foregoing writing to be a full, true, and perfect transcript and exemplification of the record and proceedings in the case of William P. Little, assignee of John R. Alexander, bankrupt, pl'ff, against T. L. Alexander, defendant, as fully as the same remain on file and of record in my office, and as certified to my office by the clerk of the circuit court of the United States for the eastern district of North Carolina, by virtue of an act of Congress establishing the western district of North Carolina.

In witness whereof I hereunto subscribe my name and affix the seal of said court at office in the town of Statesville, in said district, this 23d day of September, in the year of our Lord eighteen hundred and seventy-three.

[SEAL.] H. C. COWLES, *Clerk.*

(Indorsement on cover:) No. 206. William P. Little, assignee of John R. Alexander, bankrupt, appellant, vs. T. L. Alexander. W. North Carolina C. C. U. S. Filed 2d October 1873.

Supreme Court of the United States.

DECEMBER TERM, 1874.

No. 206.

WILLIAM P. LITTLE, ASSIGNEE IN BANKRUPTCY, &c., APPELLANT,

vs.

T. L. ALEXANDER.

Appeal from the Circuit Court of the United States for the Western District of North Carolina.

BRIEF FOR THE APPELLANT.

S. F. PHILLIPS,
For Appellant.

Judd & Detweiler, Printers.

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vs.

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Appeal from the Circuit Court of the United States for the Western District of North Carolina.

BRIEF FOR THE APPELLANT.

This is an appeal from a dercee at the hearing (April 25, 1873,) dismissing the bill.

The bill (filed January 16, 1872,) shows that the defendant commenced (March 16, 1869,) in the Superior Court of Mecklenburg county, N. C., an action against his father, one John R. Alexander, to recover $2,916.00 due by promissory note, and that at spring term of the same year, for want of an answer, he recovered judgment, (*docketed* in said county May 19, 1869;) also, that on the 1st of September, 1869, within *four months* after such judgment a petition was filed by Joseph H. Wilson and Robert D. Whitley, creditors of said John R. Alexander, to declare him a *bankrupt*, which was accordingly done, and the plaintiff chosen assignee, &c.

Afterwards property of the bankrupt was sold by the assignee, which brought a fair price, excepting certain tracts of land specified, which were bid off by said Whitley by agreement with the plaintiff (who had reason to believe that the defendant was contriving to purchase them at a price much below their actual value) for the benefit of all the creditors. On the 17th of June, 1869, an execution issued upon the judgment obtained as above, and was levied upon the said land on the 14th of August, 1869. Since then, the defendant constantly threatens to sell said lands under his execution, by reason of which their market value is greatly depreciated.

The bill further charges that John R. Alexander, within four months before the filing of the said petition in bankruptcy, *suffered* said land to be seized in execution by the defendant, with intent to prefer him as creditor, the said John then being—as defendant had reasonable cause to believe—insolvent; and defendant having also reasonable cause to believe that the seizure was in fraud of the bankrupt act, especially of its 35th section. Also, that said John, within six months before the filing of said petition, *suffered* said land to be seized, as above, contrary to the 39th section of the bankrupt act.

The prayer is for a declaration that said levy was void; for an injunction prohibiting the defendant from proceeding to sell the said lands under said execution, or from interfering therewith in anywise, and for further relief.

Upon the 4th of March, 1872, the defendant filed a plea, and also an answer to the bill.

The plea sets forth that two of the petitioning creditors, viz: Joseph H. Wilson and R. D. Whitley, upon the filing of the petition in bankruptcy, sued out against the defendant, and also against Hattie J. Alexander and the sheriff of Mecklenburg county, writs of injunction from the District Court of the United States for the western district of North Carolina for the same matters as the present plaintiff does,

and that in October, 1871, the same was dissolved; which proceedings defendant doth plead, &c.

This plea seems to have been entirely disregarded by the parties in their subsequent proceedings.

The answer admits the statement of the bill as to the existence of the suit and judgment against John R. Alexander, and also of the proceedings in bankruptcy; also that the bankrupt had large real and personal property, which the assignee offered at public sale. It denies that the assignee had reason to believe that defendant was contriving to buy that property at a price much below its value, or that the latter had such intent. It alleges that at the time of such sale counsel for defendant gave public notice of the judgment as docketed, and that purchasers would take a title subject to that lien; whereupon counsel for the plaintiff made a counter statement, &c. That the lands were then sold and brought their fair market value. That defendant does not know that the purchase by Whitley was for the use of all of the creditors of the bankrupt, but he has been informed that such purchase was for the benefit of only a part of them, and therefore submits that they have no right to maintain this bill in the name of the assignee, &c. That defendant has no connection with said sale except as to the notice by his counsel as above, and no interest in the question whether such sale be set aside or not.

His answer then alleges that the defendant's judgment against the bankrupt was obtained duly and fairly, according to the course and practice of the court, without collusion with the bankrupt; admits the docketing and issuing of a *fi. fa.* and the levy, and states that no sale had been made thereunder, because of injunction, &c. It expressly denies that the bankrupt either procured or suffered any of his property to be taken or levied upon under said judgment or execution, with intent, &c.

It then proceeds:

"Further answering, this defendant avers that his said judgment

was obtained without any concert, collusion, or agreement. And the facts in relation to the same are substantially as follows:

This defendant, at different times in the years 1860 and 1861, had loaned to John R. Alexander, his father, divers sums of money, and taken his notes for the same, at the dates of said loans. That after the war he needed his money due from his father and other parties, and if he could not get the money he desired to have his notes renewed. Wishing to avoid any unpleasant altercations with his father, which he feared might occur, he placed his several notes in the hands of Samuel P. Alexander, Esq., a gentleman residing in Charlotte, and who generally attends to the business of others entrusted to his care, with the request that he would endeavor to have them paid or renewed; that said S. P. Alexander, as he has since informed this defendant, and he believes said information to be true, called upon said John R. Alexander and requested him either to pay said notes or renew them by putting them all into one. That said John R. Alexander hesitated for some time, averring that if permitted to pay all or some of his debts (mentioned at the time) in bank notes, he had property enough to pay off the whole of his indebtedness; that after some further intercession, the said John R. Alexander consented to renew said notes, and after the calculations of interest were made, executed the note upon which suit was brought. That said renewal was made on the 1st day of January, 1869. Defendant took said note and held it until finding the other creditors of said John R. Alexander suing on their claims, and believing his father's estate would prove inadequate to the payment of all his debts, and urged by friends, he reluctantly placed said note, on or about the 16th day of March, in the hands of a law firm for coleclion. That, as informed by his counsel, a summons was issued under the new Code of Civil Procedure, returnable before the clerk, requiring the said John R. Alexander to appear and answer the same twenty days after the service thereof; that before the return day arrived the Code was suspended by an act of the General Assembly, and all writs were made returnable to the stated terms of the courts. The proceedings then begun and pending before the clerk were transferred to the ensuing term of the court, which was held in May, 1869; that defendant's attorneys filed a complaint, and the same was verified as true according to said Code, and the necessity of making defense upon oath was thereby imposed upon the said John R. Alexander, and for want of an answer at said spring term, on the 17th of May, 1869, defendant's attorneys took judgment according to the provisions of the Code and according to the course and practice of the said court.

This defendant has also learned and believes that many other suits were brought to said term against said John R. Alexander.

and he, for the purpose of delay, paid fees to several counsel to enter the usual dilatory pleas according to the old system; that he retained one especially, as defendant has been informed and believes, to represent him in the suit brought against him by this defendant; that at the spring term aforesaid the said John R. Alexander was too sick to attend court, and having no real defence to this defendant's suit, none could be put in for him, as the same had to be verified before it could be received; that said judgment was taken by his attorney, and there was no previous arrangement, agreement, or collusion between this defendant and his father for that purpose.

Further answering, defendant says that he reluctantly sued his father on the said note, but was forced to consent to do so from the consideration that the very creditors who are now most actively seeking to avoid his said judgment had already brought suits for their respective claims against said John R. Alexander in the same court, and *were desirous of each gaining a priority of judgment; that their suits being brought upon old notes, they were delayed by the pleadings and practices of the Court in relation to such debts, and the defendant only obtained that priority which the other creditors were anxious to secure for themselves.* And this defendant having fairly obtained a prior lien by final process upon the property of the said John R. Alexander, may rightfully claim the benefit of the same in this honorable court, the same not being contrary to equity or good conscience."

To this the plaintiff filed a general replication, (Record, page 38.)

Thereupon it was agreed that certain evidence which had been taken previously in a case in the United States district court, in which T. L. Alexander (the present defendant) had been plaintiff, and W. P. Little (the present plaintiff) had been defendant, should he received and heard as testimony in this case.

This testimony was substantially as follows:

Isaac Wilson (for plaintiff.)—That defendant told him, shortly after he had obtained said judgment, that he had obtained judgment for himself and Hattie Alexander against John R. Alexander, *that he did not think that Hattie ought to lose her money and that he had taken her in;* that he had been at his father for some time to sell off his prop-

erty and pay his debts, but his father said he had plenty to pay his debts and have enough to live on ; that he had got S. P. Alexander to talk to his father, and he gave witness to understand that upon such talk an estimate had been made, and they found that the estate would not pay out. T. S. A. is son, and Hattie is niece of J. R. A.; the relations between the father and son have always been kindly.

S. P. Alexander, (for plaintiff.)—Had frequent conversations with defendant, before the time of said judgment, in reference to the debt. Defendant expressed a desire to have it secured, and said he could not get his father to do anything. Defendant gave witness the notes; and asked him to talk with his father, which he did, and made a calculation of interest, and put all into one note, and got it signed. *At first, J. R. A. refused to renew, saying he thought he could pay his debts. Witness told him he thought not ; that he did not know much about his business, but this was a just debt, and ought to be paid.* He finally consented to renew. As soon as he renewed, witness told him that the defendant was going to sue him, and then he carried the note to the defendant, and gave him a memorandum of the calculation. Witness believes that it was after this that he received the Hattie Alexander note. She had talked with witness about it before, and defendant had frequently talked with him about his note and about hers, as they were intimate friends. Knowing she had this note, witness sent to her for it. He had this note renewed, and gave it out for suit. *Witness could not state the conversations he had with the defendant, as they occurred, but their purport was to collect the money, as he wanted the use of it, and wanted to save his debt, and, like every one else, was afraid of losing his old debts. Defendant said, before taking judgment, that he was afraid his father was insolvent, and would not be able to pay his debts. The notes were renewed for the purpose of collecting, to meet the difficulties of the stay law then in force in North Carolina, which was enforced by the judge of that district, and prevented the debt from being collected unless renewed.*

Witness also said that the defendant and his father had the general character of being upright, correct, and honest men.

Thomas H. Brem, (for plaintiff.)—Had known the defendant for twenty years, and his father longer. Defendant was partner with witness from 1858 to 1860, and is such now, since 1866. *About the time when the notes were renewed, defendant asked him to talk with his father, and get him to renew the notes; that he had become uneasy about his debts; that S. P. Alexander had told him to get them renewed, and then he could sue and get a judgment, which would secure his debt, and as the witness and S. P. A. had influence with his father, they might get him to renew.* Witness did not talk with J. R. A; witness and S. P. A. all thought J. R. A. insolvent. From conversations with J. R. A. witness inferred that *he* thought himself solvent; he thought that he could pay a debt to J. H. Wilson in bank bills. Defendant told afterwards that he had gotten judgment, and that he thought it secured his debt. During and prior to 1861, J. R. A. was a farmer; he did not meet current expenses, and was not out of debt to witness for goods for twenty years or more. The general character of the defendant and his father for honesty, integrity, and truth is good.

J. D. Kerns (for plaintiff.)—Had known J. R. A. for more than twenty years. In May, 1869, he owned land worth about $3,400, and personal property worth about $1,000. Is a near neighbor of J. R. A., and has been property assessor for the past three years; carried the Hattie Alexander note to S. P. A., who said that he thought J. R. A. in bad condition and not able to pay his debts, and that he wanted to try and save that debt; he thought he could get the old man to pay it, as *he* had been her guardian, and that was all she had.

John R. Alexander (for defendant.)—Borrowed money of defendant at different times before the war, and gave his notes. *After the war defendant wanted the notes renewed,*

which witness refused, on the ground that all the old debts would be repudiated. Afterwards in January, 1869, *S. P. A. came to him to have them renewed, and he refused, giving his reasons; but after some conversation S. P. A. satisfied him that there would be no repudiation, and after some persuasion witness renewed them.* Witness employed counsel to defend the suits which were brought on that note and all other suits; paid ten dollars for defence in that case and other fees in other cases; was sick and unable to attend the term in person. Witness renewed a note for Hattie Alexander; also one for Brem & Steele, but no others. Joseph H. Wilson wanted to have one to him renewed, but witness declined, giving as his reason that he had offered Wilson Confederate money for it in 1862, &c. Was not, according to his recollection, asked to renew other notes.

T. L. Alexander (for defendant.)—*In January,* 1869, *lent his father twenty dollars,* and that together with money lent in 1861 and before, made up the amount of the note given in January, 1869, upon which suit was brought.

Several transcripts of records from Mecklenburg Superior court were also filed, showing that the only persons who procured judgments at such term against John R. Alexander were his aforesaid son and niece. The complaint filed by the former was *verified* and served with the summons; that by the latter was not verified.

To a suit brought by Whitley, J. R. Alexander pleaded a counter-claim for a smaller amount than that sued upon, and for the rest "*submits to a judgment at the term when the plaintiff may be entitled thereto according to law.*" No defence was made by the plaintiff to the counter-claim, and the case was continued.

To a suit brought by Alice Alexander, he pleaded that she, by one Hays, her agent and late guardian, had agreed to take Confederate money for the debt sued upon, which,

when tendered, said Hays refused to take. The case was then continued.

To an action by *Stirewalt*, as guardian, for $933.35 and interest, duly verified, no plea was entered, but the same was CONTINUED.

To an action by Barry, &c., the defendant pleaded that the note was given as the price of a negro, "who, of right and according to law, as defendant is informed and believes, was a free person," &c.

A transcript from the office of the register in bankruptcy was also filed, showing that debts to the amount of $4,938.46 had, on the 16th of November, 1870, been proved against J. R. Alexander's estate.

[These did not include the debts due to the defendant, and to Hattie Alexander, or one to the witness Brem, (for $52.15,) and secured by a magistrate's judgment, a transcript being filed in the case.]

The cause was then, by consent of parties, set for hearing upon the pleadings, exhibits, and proofs, &c., on file.

Upon the hearing, the Court, amongst other things, held that the renewal of the note on the 1st of January, 1869, was a *bona fide* transaction, and in no way gave such a *preference* to T. L. Alexander as is fraudulent at common law, by the laws of this State, or under the bankrupt act. The statute of this State (usually called the stay-law) in relation to debts contracted previous to the 1st of May, 1865, being unconstitutional, and so declared by the Supreme Court of this State at January term, 1869, in the case of Jacobs *vs.* Smallwood, (63 N. C., 112;) also, that all creditors of J. R. Alexander, whether they held *old* or *new* notes, had like remedies in law, and were entitled to stand upon equal footing in the court at spring term, 1869; and if any legal rights were denied a creditor by the ruling of a judge, he has no just cause to com-

plain of another creditor who obtained an honest advantage by pursuing the lawful course and practice of the court.

As to some parts of the case, however, the court ordered *that issues should be submitted to a jury at the next term, to be heard and determined upon the pleadings and proof.*

After this R. D. Whitley filed a *disclaimer* of any interest in the property of John R. Alexander bid off at the assignee's sale and all interest in the cause except as creditor.

In accordance with the above order a trial was subsequently had of the following issue: "Did John R. Alexander allow judgment by default to be entered against him at spring term, 1869, of Mecklenburg Superior Court in the action of T. L. Alexander, with a view to give a preference to the said T. L. Alexander over other creditors?" and thereupon a verdict was rendered in the negative.

Upon further hearing such verdict was approved by the court, and a declaration made in accordance therewith; and thereupon the bill was dismissed.

From that decree the plaintiff appealed, &c.

It will be observed that the facts in the case were left *in part* to be found by a jury in the court below. A matter which the appellant regards as of much importance was not so left, but was decided by the court itself. The appellant contends that there was a miscarriage as to that point; *i. e.*, in declaring that the giving of a new note to the defendant by the bankrupt in January, 1869, was not, in connection with what followed, a violation of the bankrupt act. He also contends that such transaction, being a violation of such act, the benefits thereof were appropriated by the defendant, *so as to fix him with the consequent penalties* at the time of his taking judgment, docketing it, and making levy, as described in the record.

In this connection, we shall argue that *if parties concert a scheme for obtaining fraudulent preference, which depends for its success upon an anticipated erroneous administration of the laws, which erroneous administration comes to pass, and secures the intended preference, such scheme is as much a violation of the bankrupt act as if framed in anticipation of a correct administration of the law.*

The parts of the bankrupt act which are relied upon, are—

"SEC. 35. That if any person, being insolvent, or in contemplation of insolvency, within four months before the filing of the petition by or against him, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefitted thereby, or by such attachment, having reasonable cause to believe such person is insolvent, and that such attachment, payment, pledge, assignment, or conveyance is made in fraud of the provisions of this act—the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefited."

"SEC. 39. * * * * * Or who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, shall make any payment, gift, grant, sale, conveyance, or transfer of money, or other property, estate, rights, or credits, or give any warrant to confess judgment, or procure or suffer his property to be taken on legal process, with intent to give a preference to one or more of his creditors, or to any person or persons who are or may be liable for him as endorsers, bail, sureties, or otherwise, or with the intent by such disposition of his property, to defeat or delay the operation of this act," * * * shall be deemed to have committed an act of bankruptcy." * * * * "And if such person shall be adjudged a bankrupt the assignee may recover back the money or other property so paid, conveyed, sold, assigned, or transferred contrary to this act: *Provided*, The person receiving such payment or conveyance had reasonable cause to believe that a fraud on this act was intended, and that the debtor was insolvent."

The plaintiff is required to show—

I. That J. R. Alexander, within four months before a petition in bankruptcy was filed against him, being then insolvent, procured or suffered his property to be taken on legal process, with intent to give a preference to the defendant, or with intent to defeat or delay the operation of the bankrupt act.

II. That the defendant had, at such time, reasonable cause to believe J. R. Alexander insolvent, and such seizure to be in fraud of his creditors.

Such are the allegations by which the bill endeavors to bring this particular case within the requirements of the bankrupt act.

I.

(*a*) That what was done by the bankrupt, as above, occurred *within four months* of the time that the petition was filed, appears by the answer of the defendant, (Record, folio 34,) fixing the date of the judgment as the 17th of May, 1869, and admitting, (folio 30,) that it was afterwards regularly docketed, so as to effect a lien on all the real estate of the bankrupt in the county of Mecklenburg from the date of docketing, and further, (folio 26,) admitting the truth of the allegation in the bill, (folio 3,) that the petition in bankruptcy was filed on the 1st day of September, 1869.

(*b*) That the bankrupt was then insolvent appears by comparing the amount of the debts proved against him in bankruptcy, (folio 101,) *i. e.*, $\$4{,}938\frac{46}{100}$, and otherwise proved to be due to defendant, Hattie Alexander, and Brem, (folios 71, 75, and 84,) *i. e.*, $\$3{,}306\frac{23}{100}$, in all, deducting interest, more

than $8,000, with the value of the property shown by the witnesses Kerns and De Armand, (folios 56 and 59,) to have belonged to him in May, 1869, viz., $4,400.

(c) Whether he *procured or suffered* such seizure *with an intent to prefer* the defendant, or *with an intent to defeat or delay* the operation of the bankrupt act, is the principal question in the cause, and requires some discussion, chiefly as to the principles of law which govern the case, there being but little complication of facts.

It will be necssary, in the first place, to call attention to the state of legislation in North Carolina upon the subject of the collection of debts when the note was renewed, (January 1, 1869,) and again when the judgment was taken, (May 17, 1869.)

By the North Carolina code of civil procedure (in general a copy of that of New York) adopted in August, 1868, jurisdiction of actions for debt over $200 in amount was conferred ordinarily upon a court held by the clerk of the superior court, (sec. 73,) always *open*, *process* being *returnable* in twenty days or more after service, (sec. 74;) issue to be joined, at farthest, (unless there should be special allowance of time,) in thirty days thereafter, (secs. 94, 105;) *issues of law* to be *heard* after ten days more (sec. 111) by the judge of the court; and *issues of fact* to be tried at the next *term* of the superior court, provided such term happened thirty days or more after issue joined, (sec. 226.) If the plaintiff's complaint were *verified* all subsequent pleadings were also to be verified, (sec. 116.) Two terms of court occurred during the year, (sec. 11.)

From these provisions were excepted (sec. 8) all actions for causes of action included within an ordinance ratified March 14, 1868, these being left to be governed by such ordinance.

That ordinance, entitled "An ordinance respecting the

jurisdiction of the courts of this State," was an amendment of a previous ordinance of another convention (June 23, 1866) having the same general objects. It drew a distinction between debts (then commonly called *new*) contracted *after* May 1, 1865, unless *in renewal of a prior contract to the full amount of its principal and interest, and without other consideration than such pre-existent debt*, and debts (then commonly called *old*) contracted *before* May 1, 1865; and its especial provisions were confined altogether to the latter class. Those provisions for debts over $200 in amount were, that actions therefore were to be cognizable only at the *spring term* of the superior court; all suits then existing *to be continued* to, and all other suits *to be brought to* spring term, 1869; at which term, if there were no litigation, the plaintiff could recover judgment for only one-tenth of the amount of principal and interest, the case being, thereupon, *continued* to spring term, 1870, when another judgment, for one-fifth, &c., could be had, the remainder being recoverable in two other annual instalments, in 1871 and 1872.

The general result, therefore, of the above legislation was that debts (over $200 in amount) made after May 1, 1865, (unless *fully* and *only* in *renewal*, &c.,) known commonly as *new* debts, could in ordinary cases, where the defendant had no defence, to the truth of which he would make oath, be recovered within about two months; whereas *old* debts, (*i. e.*, those prior to May 1, 1865,) even where there could be no defence, were to be recovered, by utmost diligence, only after more than three years.

Debts under $200 in amount, cognizable before magistrates, were dealt with in a similar way; but it is not material here to set out details.

The distinction between debts made after May 1, 1865, in full renewal of old debts and those made after that time, having *other consideration* besides the full amount of such old debts, is observable, and bears upon the transaction now in question.

In the case of Jacobs *vs.* Smallwood, 63 N. C., 112, decided about the 1st of March, 1869, the Supreme Court of North Carolina held the above provisions of the ordinance of 1868 to be unconstitutional; and thereby did away with the distinction between *new* and *old* debts, and subjected all debts equally to the above provisions of the code.

Thereupon the Legislature (March 22, 1869,) passed an act *suspending* the Code of Civil Procedure. This required *actions* to be brought to *term time; issues* to be tried at the term succeeding that at which the "pleadings are completed;" and *property sold under execution* to bring *two-thirds* of an "appraised" value.

We will now, by the light of two recent decisions in this court (Buchanan *vs.* Smith, 16 Wall., 277, and Wilson *vs.* City Bank, 17 Wall., 473) endeavor to state the principles which control the question, whether a debtor has, within the meaning of the bankrupt law, *procured* or *suffered* a seizure of his property, &c.?

These were both cases of an alleged *suffering*, &c., by persons insolvent. In the former the allegation was held to be established; in the latter it was not. The latter case somewhat modifies language used by the court when discussing the former, whilst at the same time it declares that the former case was *well decided upon the evidence*, (p. 488.)

The case of 17 Wall. is one where an insolvent firm, with assets at cost prices, about equal to its liabilities, (p. 477,) which was not shown to have abandoned hope of its affairs, had been absolutely inactive as to a suit brought by a creditor, which in the end gained for him a *priority*. The case in 16 Wall. is one of equal inaction as to a suit having the same result by an insolvent manufacturing corporation, of which

the creditor had previously made frequent demands for a preference, the assets of which were less than sixty per cent. of its liabilities, (p. 288,) and which was shown, by a previous *general assignment*, to have despaired of its affairs.

In reference to the facts of the case in 16 Wall. the court there said that failure to go into voluntary bankruptcy before judgment had been obtained, was a *suffering* of such judgment, within the provisions of the act. In reference to the facts of the latter case, the court said that such failure was not a *suffering*.

The latter case establishes also the doctrine that unless it be shown *positively* (either expressly or by circumstances) that the insolvent *desired* that the creditor suing should gain a priority, the court could not conclude, in a case of inaction upon his part, that he had *suffered* seizure, &c. It farther corrects an impression that might have been had from the opinion in 16 Wall., if read without adverting to its subject-matter, viz: *That mere inaction by an insolvent who is sued, is suffering;* lays down as the true rule *that to make out a suffering there must be, in addition to such inaction, at least "very slight evidence, of an affirmative character, of the existence of a desire to prefer" * * * "to color acts or desisions otherwise of no significance."* As an instance of such evidence it approves of the proof in the former case, viz: That the insolvent knew, by frequent applications to him, that the creditor proposed to gain a preference, coupled with the proof that by a general assignment it had manifested its own conviction that its affairs were beyond remedy.

Accordingly, we submit—

1. That the present case, *treating it as one of mere exterior inaction by the bankrupt*, shows plainly that his *desires concurred* with the efforts of the defendant to gain a priority; and—

2. That the present case is one of an ACTIVE INTERFERENCE by the bankrupt to further the views of the defendant.

1. The desires of the bankrupt concurred with the efforts of the defendant to gain a priority.

The bankrupt was largely insolvent, and, by the history of his life in pecuniary matters, (Record, folio 53,) by his confession of *what was the source* of his hopes of *paying his debts*, (folios 32, 52, 62,) and by the sort of arguments which induced him to make a new note, (foljos 32, 42, 45, 62,) is shown to have been consciously in a desperate state of affairs before the suit was brought. He gave the new notes to *his son*, (folio 43,) *his niece*, (ibid,) and an *old friend*, (folios 49, 50, 55, 63,) in view of the provisions of the above ordinance, which, however unconstitutional, was nevertheless then supposed by him to be valid, and which in fact, (folios 35, 47, 94,) as specifically anticipated, (folios 45, 47, 65,) was allowed by the judge of the district in which the suit was brought to secure an advantage to the parties whom he had favored. The very peculiar circumstance, (folio 65,) of adding twenty dollars to a debt of $2,896, at the time of renewing the latter, places the transaction in the very *ear mark* of the above *stay law*, inasmuch as after that addition the new note could not be said to be *wholly upon a consideration of renewal.*

What is alleged by the bankrupt, as witness, (folio 62,) in reference to his *desire* and *attempts* to resist judgment at the spring term, is of very slight, if of any, contrary weight. That desire and those attempts sprung up after he had found out that he could make no defence of the suit suggested. The complaint was *verified*, and even supposing such *dilatory* defence in any case *proper*, (17 Wall., 484,) he knew that he could make no defence without making oath to it. The*bona*

fides of an alleged desire, which is represented as on the alert and active in attempting impossibilities, whilst refraining from a sort of resistance (viz., bankruptcy,) entirely practicable and effective, may well be doubted. The case in this respect does not come up to the decree of *opposition* to the creditor, regarded by this court in the above case in 16 Wallace as *immaterial.*

But the present case goes even further, being one of *active co-operation* between the bankrupt and the defendant.

The bankrupt, by renewing the debt, did that which he believed *would*, and which in the event *did*, give the priority complained of.

The *renewal* was not agreed to by the bankrupt for any reason which generally prevails with debtors to renew. No favors to him sprang out of the transaction. He obtained no *extension*, and, indeed, was persuaded to renew by arguments which convinced him that no favor by his creditors could avail him, inasmuch as he was, beyond hope, *insolvent.*

Every special feature of the transaction shows that the bankrupt directed his course therein by the provisions of the above stay law. S. P. Alexander, who acted therein for *both parties*, as it were, (being a man of great influence with the bankrupt and the agent of the defendant,) says that the renewal was "for the purpose of collecting," (folios 46, 47,) and that he told the bankrupt immediately afterwards (folio 45) that suit would be brought, and soon thereafter sent for the Hattie Alexander note, and had it renewed and sued upon.

Although the bankrupt is said to be an *upright* man, he was evidently no Spartan in that way. For he long hoped for a law to enable him to effect a *general repudiation* of his

debts, and during that while he kept all of his creditors at bay. When convinced by S. P. Alexander (folio 62) that there would be no *repudiation* he betook himself to the *stay law*, and its distinction of *old* and *new* debts, as being, if not so good as *repudiation*, at least sufficient to enable him to draw a line between debts which he might conclude *ought to be paid* and *ordinary* debts, and incidentally to do what (perhaps with some interval) was the next best thing to that of *keeping* his property, viz., placing it where substantially it might be controlled by *his son* and *his niece*, with the aid of *an old friend!*

At the next term the judge of the district disregarded the decision of the Supreme Court in Jacobs *vs.* Smallwood, and enforced the stay law.

This is admitted by the defendant in his answer, (folio 35,) viz: "That their [referring thereby to the very creditors who are now most actively seeking to avoid the defendant's judgment] suits *being brought upon old notes, they were delayed by the pleadings and practice of the court in relation to such debts*, and the defendant only obtained that priority which the other creditors were anxious to secure for themselves."

This is a clear admission that the distinction between *old* and *new* debts which was due entirely to the ordinances of 1866 and 1868, and which the Supreme Court had sought to abolish by the recent decision in Jacobs *vs.* Smallwood, was nevertheless *enforced* by the district judge, and that the race of diligence between the defendant and the creditors represented here by the assignee in bankruptcy, was determined entirely by that *distinction.*

The evidence of S. P. Alexander is to the same effect (folio 47.) The transcripts in evidence also confirm this statement, which, in its turn, reflects light upon the *frivolous pleading* by the bankrupt allowed upon the face of such transcripts; and also upon the *continuance* of Stirewalt's case, (folio 91,) in which no answer had been filed.

We submit, then, that the defendant admits that he obtained this judgment because of a characteristic of the debt sued upon that had, by the bankrupt, been voluntarily imparted to it; imparted too, as the proofs in the case show, by the bankrupt with the distinct object of facilitating such judgment.

If this be so, we submit farther that it is of no consequence that the defendant obtained at spring term, 1869, no more than by law he was entitled to, for it seems to be quite as fatal to his cause to vary our above proposition by saying that the bankrupt and he arranged the scheme *by which he alone of all the creditors got the benefit of the law at such term.* The case as thus presented by him is no more favorable to his cause than if the facts were that he alone of all the creditors had brought suit to that term, *the bankrupt* (say) *having facilitated the proceedings therein.*

In such cases it can make no difference that it does not appear that the bankrupt would not have given the same facility to other creditors, if they had applied for it, (folio 64.) The law will not speculate upon what *might have been.*

It is to be borne in mind that even upon this *second* head, *i. e.*, the proposition *that the bankrupt actually enabled* the debtor to get this priority; it is not material that the action of the former occurred *more than four* (here *eight*) months before the filing of the petition in bankruptcy. For what was so done only became effective by what the defendant did in consequence, at spring term. *The renewal gave the defendant no rights in rem.* If, upon reflection, the defendant had chosen to go no further with the scheme, the other creditors would have had no substantial ground of complaint. The question is, when did the scheme *mature* and *bear fruit?* (Bump, 593.) It is of what then occurred that the pleadings should, as they do, complain.

II. That the defendant on and after January 1, 1869, had reasonable cause to believe J. R. Alexander to be insolvent, and the *seizure* to be in fraud of other creditors, appears very plainly upon the record.

He was a man of business, living upon good terms with his father, and in his vicinity. The state of his father's business was very simple, consisting of a few items on each side, and proved that he could pay little more than fifty cents on the dollar. He had been anxiously and unavailingly applying to his father for security upon his own debt; and enlisted in his behalf persons who he thought had influence with his father. He is to be charged with all that S. P. Alexander, *his agent in the transaction of renewing*, had reason to believe. (The Distilled Spirits, 11 Wall., 356.) His allegation, that he had not concluded to sue his father until March, 1869, when he found others doing so, is, in the face of what his agent says, and of the character of the transaction of renewal, *very clearly an error!* Although the fact that one actually believes another to be insolvent may not show that the former had "*reasonable ground*" so to believe, yet, if in addition that other be actually insolvent, such belief is the strongest evidence of a reasonable ground for it.

That is the case here. (Folios 42, 45, 46, 47, 51.)

That the defendant had reasonable cause for a belief that that the seizure would be in fraud of other creditors, &c., follows as a consequence.

S. F. PHILLIPS,
For Appellant.

No. 206.

IN THE

SUPREME COURT OF THE UNITED STATES.

WILLIAM P. LITTLE, ASSIGNEE OF JOHN R. ALEXANDER,

A BANKRUPT, APPELLANT,

vs.

T. L. ALEXANDER.

Brief in behalf of Appellee.

H. W. GUION,
Counsel for Appellee.

CHARLOTTE, N.C:
TOBACCO LEAF AND COTTON PLANT PRINTING HOUSE.
1875.

IN THE
SUPREME COURT OF THE UNITED STATES.

WILLIAM P. LITTLE, Assignee of John R. Alexander, a Bankrupt, Appellant,
vs.
T. L. ALEXANDER.

No. 206

Brief in behalf of Appellee.

Defendant, T. L. Alexander, on the 19th day of May, A. D., 1869, recovered a Judgment against John R. Alexander in the Superior Court of Mecklenburg county for $2986.85, and caused the same to be docketted in the office of the said Superior Court, which, by the laws of the State, operated as a lien upon the real estate of John R. Alexander in the the county of Mecklenburg. That within four months thereafter, to wit: the first day of September, 1869, a petition was filed against the said John R. Alexander, praying that he might be declared a Bankrupt, and that he was accordingly adjudged and decreed a Bankrupt by the District Court of North Carolina, and the plaintiff, William P. Little, was appointed his Assignee, to whom all the estate and effects of said John R. Alexander were duly assigned by the Register.

Thereupon, this bill was filed, praying a perpetual injunction

to restrain T. L. Alexander from selling the land of John R. Alexander under his judgment in the said State Court, on the ground that the said judgment was obtained in violation of the 35th and 39th sections of the Bankrupt Law; and that the said John R. Alexander, by permitting said judgment to be taken, did suffer or procure his lands to be seized under execution in favor of T. L. Alexander, with intent to give a preference to him over his other creditors.

These *allegata* are sufficiently strong, but unfortunately, they are not sustained by the *Probata*.

The bill is in the nature of *a bill of Peace*, which is generally filed for securing an established legal title against the vexatious recurrence of litigation. *The Equity*, is, that, if the right be established at law, it is entitled to adequate protection.

(Adam's Eq., page 199, 3 Am. Ed.)

In order to the maintainance of a *bill of Peace*, the complainant must have first established his title at law."

(Adams *ubi supra* in notes citing many cases.)

The defendant has, at law, established his right to sue out execution; for all judgments are presumed valid by other courts, until reversed or vacated in a regular way. Plaintiff says, that the Register's assignment transferred the property to him; that he has a right to take the property, notwithstanding defendant's lien, for the defendant's judgment is void. Now, of the two, the the defendant is more entitled to the protection of the court, for his right is established at law, and is only clouded by the *allegation* of plaintiff. A court of Equity never tries titles at law.

Procuring or suffering any part of his property to be attached, with a view to give a preference to any other person in the contemplation of the Bankrupt Law, means actually and willingly done.

(Wilson vs. City Bank, 17 Wall. 473.

Where judgment has been obtained in *invitum*, according to the course and practice of the court, the defendant, in the action, is certaintly not chargeable with the consequences of the act.

He certainly does not procure or suffer the act to be done. On the trial in the court below, the Judge deemed it necessary to refer the question of intent to the trial of a jury, thus supplying the deficiency in the original bill, as a *bill of Peace*. That jury returned a verdict as follows: The said John R. Alexander did not allow the judgment by default to be entered against him in the Superior Court in 1869, in the action of T. L. Alexander with a view to give a preference to T. L. A., over other creditors. This finding was satisfactory to the Judge, and is supported by the facts of the case. It seems that on January 1st, 1869, John R. Alexander renewed his old debts to T. L. Alexander, at the instance of S. P. Alexander, to meet the difficulties of the Stay Law.

(Dep. of S. P. Alexander, printed trans., page 15.)

The said T. L. Alexander, finding that others were about suing, and had sued John R. Alexander, instituted an action on the note, aforesaid, 16th of March, 1869. He made the summons returnable before the Clerk of the SuperiorCourt of the county of Mecklenburg.

Twenty days from the service of the same, complaint was regularly filed. (Trans., 67, 68, 69, 70.) This complaint was sworn to and subscribed according to law. Before the trial day arrived, the Legislature of the State required all such civil actions, pending before the Clerk of the Superior Court, to be returned to the next term of the Superior Court. Nothing more was done in this case before the Clerk, and he returned the same to the regular terms of the Court, and entered the same on the docket. The defendant therein, John R. Alexander, failing to appear and answer the same on oath, judgment was rendered against him. All this was done in strict accordance with the law.

In August, 1868, the Code of Civil Procedure was adopted, materially altering the practice that had theretofore existed in the State. By section 13, it is "provided that the summons shall command the officer to summons the defendant to appear at the office of the Clerk of the Superior Court, for some certain county, within a certain number of days after the service, exclusive of the day of service, to answer the complaint of the plaintiff; it shall be dated on the day of its issue."

(Sec. 74.) "There shall also be inserted in the summons a notice, in substance, as follows:"

"In an action arising on contract for the recovery of money only, that the plaintiff will take judgment for a sum specified therein, if the defendant shall fail to answer the complaint within the time specified."

(Sec. 116.) "Every pleading in a Court of Record must be subscribed by the party; and when any pleading is verified, every subsequent pleading, except a demurrer, must be verified also."

The Legislature, in the Act 68 and 69, ch., 70, enacted as follows:

(Sec. 3.) "The plaintiff shall file his complaint in the Clerk's office on or before the third day of the term to which the action is brought, otherwise the suit shall, on motion, be dismissed by the Court at the cost of the plaintiff."

(Sec. 4.) "The defendant shall appear and demur, plead, or answer at the same term to which the summon shall be returnable, otherwise the plantiff may have judgment by default, as is now allowed by law."

Sec. 5. "The plaintiff shall join in the demurrer, or reply to the answer at the same term to which such demurrer, or answer, may be filed, and that the issues, whether of law or fact, shall stand for trial at the next term succeeding that at which the pleadings are completed.

Sec. 6. "That all writs of summons in civil actions now in the

hands of the Sheriff or Clerk, shall be returned by said officers to the next term of the Superior Court, and such writs, together with all writs of summons in civil actions heretofore returned, in which no final judgment has been rendered, shall be placed by the Clerk on the docket of the Superior Court at the next ensuing term; and the pleadings in such actions shall be conducted according to the rules prescribed in this Act: *Provided*, That all civil actions in which issues have been joined, shall stand for trial at Spring Term, 1869; *Provided further*, That issues of law, or of fact, which have been joined in pursuance of law and ordinances heretofore passed and known as the "Stay Law," shall be considered as having been illegally joined, and all such actions shall be placed upon the Appearance Docket at Spring Term, 1869, by the Clerk of the Superior Court, and the pleadings therein shall be made up and issue joined at said term, as provided in this Act, unless in any county the time of said term shall have passed, in which case such action shall be placed upon the Trial Docket at Fall Term, 1869. This Act was ratified the 22d day of March, 1869. According to the new practice thus introduced August, 1868, plaintiff filed his complaint, and verified the same. (Page 70.) That at the regular May Term, the defendant, failing to answer the complaint, or demur thereto, judgment was rendered against him. He employed counsel to defend it, (page 63,) to put off the judgment as long as possible, and paid a fee to counsel to attend to it. He did not personally attend the Court, being confined to bed most of the time, and his counsel could not put in his answer for want of his affidavit, so that judgment was rendered according to the law existing at the time. The evidence, therefore, so far from proving intent to prefer his son over other creditors, proved that he intended to put off the judgment as long as possible. The Judge below submitted the question of intent to a jury at law, and upon the trial of said issue, the pleadings and proofs filed in the cause, were used as testimony. The jury found there was no intent to

prefer T. L. Alexander. It does not appear that the plaintiff objected to anything that occurred during the trial, or that he took any action, in either Court touching the verdict. He, therefore, should be concluded thereby. (Prout *vs.* Robey, 15 Wallace, 475.)

Except for the 3d clause of the 2d Section of the Bankrupt Act; the plaintiff would have no right to institute this action in the United States Circuit Court against a citizen of the same State with himself. (Morgan *vs.* Thornhill, 11 Wallace, 65.)

When he does sue he acquires no other or greater privileges than any other suitor under the Judiciary Act.

The United States Courts are expressly prohibited from issuing injunctions to stay any proceedings in the State Courts; and issuing an execution is a very material part of these proceedings. (Riggs *vs.* Johnston County, 6 Wall, 166; McKim *vs.* Voorhis, 7 Cranch, 281, etc.)

The fact that he styles himself Assignee in Bankruptcy, cannot enlarge the powers of the Court, and cannot secure for himself a relief which the Court cannot give. The defendant is not asking of the Bankrupt Court any aid or privileges whatever; neither is there any proposition to pay off his mortgage or lien, or otherwise interfere with it. The Circuit Court of Equity has no power to review or reverse judgement of a State Court, and every judgment is presumed valid, until reversed in a proper way. The plaintiff mistook his remedy. He should have resorted to the State Court to test the validity of the judgment, and set aside, if erroneous or fraudulent.

Bump's Law and Practice of Bankruptcy, 370, 5 Edition.

H. W. GUION, *Counsel.*